



INDONESIA
arbitrary arrest
& torture
Papuan people

PAGE 45



KASHMIR
torture
against
children

PAGE 39



PAKISTAN
sexual
commodity

PAGE 53

TORTURE

ASIAN AND GLOBAL PERSPECTIVES

APRIL 2012 WWW.HUMANRIGHTS.ASIA VOLUME 01 NUMBER 01 ISSN 2304-134X (PRINT) ISSN 2304-1358 (ONLINE)

INDIA

THIRST FOR DEMOCRACY



THE "TICKING BOMB": A SPURIOUS ARGUMENT FOR TORTURE
BOB BRECHER
AUTHOR OF "TORTURE AND THE TICKING BOMB"

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■ AFSPA empowers the armed forces to arrest without warrant. Shoot-to-kill, and destroy property in notified “disturbed areas”

■ **First enacted in 1958 as short-term measure, it has been in force in parts of the Northeast and Jammu & Kashmir in India**

How many days must a woman fast before she is free?

Only a government that
IS NOT CORRUPT
can end

CORRUPTION!

[illegible]

TORTURE

VOLUME 01 NUMBER 01 APRIL 2012 ISSN 2304-134X (PRINT) ISSN 2304-1358 (ONLINE)

OPINION:

**TORTURE: ASIA'S
ELEPHANT IN THE ROOM**
TISARANEE
GUNASEKARA 06

ANALYSIS:

**THE "TICKING BOMB": A
SPURIOUS ARGUMENT FOR
TORTURE**
BOB BRECHER 30

ESSAY: OF TORTURE

CESARE BECCARIA 60

ARTICLE:

**TORTURE AGAINST
CHILDREN IN KASHMIR**
SHEIKH HUSSAIN 39

INDONESIA:

MILITARY IMPUNITY 45

PAKISTAN:

TORTURE IS A NORM 53

VIEWPOINT:

**INFRINGEMENT OF TRIBS'
HUMAN RIGHTS**
HESHETO CHISHI 65

COVER STORY THIRST FOR DEMOCRACY

Torture neither promotes democracy nor supports the rule of law. On the contrary, torture, whether openly or clandestinely used, undermines democratic governance. 09



INTERVIEW

WE ARE PATHFINDERS - BIJO FRANCIS

25

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PUBLISHED BY



ASIAN HUMAN
RIGHTS COMMISSION



REHABILITATION AND
RESEARCH CENTRE
FOR TORTURE VICTIMS

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EDITORIAL



610 的指示 2005.2.15 三竖

The police radio blares, "If she dies due to the torture, just report it as suicide." - Cartoon Courtesy: Clearwisdom.net
 (Note: Because of the 610 Office's position, function and bloody crimes in persecuting Falun Gong, the international community calls it the "Chinese Gestapo.")

TORTURE: ASIAN AND GLOBAL PERSPECTIVES

In releasing our first issue, *Torture: Asian And Global Perspectives*, we wish to convey our happiness and excitement at getting our message out to readers. We are only too aware that subjects covered in this magazine are not quite conducive to feelings of happiness. It can be depressing to talk about human rights, particularly in the face of such rampant abuse. Yet the emotion we would like to share with our readers in releasing this magazine is neither that of extreme joy nor of despair, but a quiet hope. Through bearing witness to suffering, we are determined to bring an inextinguishable light to countless victims of torture, an aspiration and ideal that individuals will no longer be denied their inherent dignity, liberties and rights. This is our response to the ever louder declamations against acts of senseless, lawless violence from persons and communities all over Asia.

A free and prosperous society, however, cannot be achieved through spontaneous revolution but through the gradual evolution of public opinion and values. This can only arise from proper education and the dissemination of knowledge. To this end, our magazine will seek to address in greater detail the many different aspects of torture, a practice that persists in Asia and many other places around the world, despite a litany of prohibitive laws.

Torture is often used by authoritarian regimes as a means of maintaining control and suppressing opposition. One of the reasons torture is less prevalent in some places than in others is that certain countries have open and free political processes that protect dissenting voices and institutional checks and balances to the power of any

particular group. While torture is often used to address the insecurity dialogue and debate cause authoritarian regimes, there exist many historical examples societies forcing political reform despite the best efforts of whoever may be in charge. This is both a challenge and a hope for most countries in Asia today.

The concept of publishing a bi-monthly magazine on torture was borne of these circumstances, limitations and hopes. The publication will give prominent coverage to the atrocities committed by authorities and affiliated agencies against individuals legally under their protection. We seek to create a platform for the discussion and exposure of torture practices in Asia and around the globe. Each fortnightly edition will be divided into three main types of narratives: stories from individuals of their traumatic experiences, interviews with people working in the subfield of human rights violations related to torture and feature-length essays approaching torture from specific facets of psychology, forensics, philosophy and ethics, politics and law.

Our stance is firmly against any form of torture, a practice legally and morally reprehensible, and unjustifiable under all circumstances. We call for governments to investigate thoroughly and prosecute perpetrators of such brutality. We also invite our readers to participate in this campaign against torture. The global citizenry continue to hope (and should demand) that their governments, guided by the fundamental principles in the Universal Declaration of Human Rights and other international conventions, take legislative, administrative and judicial action so that not only will justice be served, but a lasting peace will be brought to humanity.

The Asian Human Rights Commission

(AHRC) has helped document over the years cases of torture and other human rights violations. It has become clear that individuals and peoples across Asia are frustrated and deeply embittered by the widespread lack of respect for human rights in their countries. Yet the expression of such anger and frustration tends to stay firmly in the private or domestic sphere; such is the stranglehold authorities have on individuals through the exercise of fear. This kind of discourse is difficult, if not impossible, to monitor. Despite attempts by the media to expose state-sponsored violence, it is unable to represent and broadcast the private fears, experiences and opinions of the average person. State censorship has also proved a common blight in Asia – there is often a conscious attempt by the media to reflect a positive or at least sober mood at home and expressions of domestic malcontent are quite sophisticatedly framed as unfashionably unpatriotic. Discussions about ‘difficult’ issues like torture are discouraged and adopt the shade of social taboos. In marginally freer forums, the media practices self-censorship in order to not invite attention, criticism and recrimination. Only an already privileged minority in society is able to express their support for the status quo. But this is a magazine to “rock the boat” and open avenues for healthy discourse.

Eradicating torture is a gradual but necessary process that we all bear responsibility for. Please support us by subscribing to the print magazine so we may broaden our readership in Asia and around the world, galvanise governments and aid advocacy groups. Your help is critical for the circulation of a thing we, and the multitudes around the world, cherish and cannot easily be vanquished: hope. Let us remain steadfast in that hope we profess, of a world without violence, and a future free from fear.

COVER STORY: OPINION

© AHRC Photo

TORTURE: ASIA'S ELEPHANT IN THE ROOM**BY TISARANEE GUNASEKARA**

In Asia, the time has come to speak of torture, from rooftops.

The anecdotal evidence presented by the contributors to this inaugural issue reiterates a profoundly disturbing truth: in Asia, torture is everywhere. Torture flourishes both in long standing democracies such as India, and in relatively new entrants to the democratic fold such as Indonesia. Torture has made its *modus vivendi* with the rule of law, enabling it to pervade not just countries like Sri Lanka where the rule of law is being replaced by the law of the rulers, but also countries like India which have managed to maintain an enviable degree of judicial independence. Nor has the scrupulous exclusion of the military from politics and civil affairs provided an adequate bar to torture in Asia.

Asia thus effectively debunks the deeply ingrained belief that torture happens only in anti-democratic or non-peaceful situations.

By demonstrating that torture can coexist with democracy and the rule of law, the Asian example compels us to rethink many of our familiar, comfortable and comforting catchphrases about torture.

Torture's ubiquity in Asia is such that it has become an integral part of the continent's everyday landscape. Torture is so 'normal' that governments are rarely held to account for practicing it, judicial systems are often lackadaisical in dealing with it, national media ignore it and the public is indifferent to it. This insidious normalisation of an abhorrent practice is a colossal bar to combating torture in Asia.

To be able to banish torture from our midst, we need to acknowledge its presence amongst us. Before combating the problem of torture, we need to transform torture from a non-issue into an issue.

A public outcry against torture cannot happen in the absence of public acknowledgement of and public debate about torture.

If asked, most people would readily oppose torture, in general. But many of these opponents of the idea of torture would have no difficulty in finding some 'good' reason to excuse – even justify – the practice of torture, in particular. Though opposing torture in the abstract, they will have little hesitation in extenuating torture, if it is applied to the 'right' people, at the 'right' time, for the 'right' reason. These 'acceptable victims' will vary from place to place and from time to time; but almost always there would be somebody 'deserving' to be tortured, for the sake of 'national security' or 'political stability', 'law and order' or 'public welfare', 'tradition' or 'religion'....

In the absence of a frank and vibrant public discourse, the public perception of torture as an 'acceptable' method of uncovering crimes or punishing the guilty, of protecting the innocent, controlling threats or safeguarding traditions cannot be countered. And so long as torture remains acceptable socio-psychologically, no amount of laws will be able to weaken its hold on our societies, our homes and our minds.

There cannot be a 'little bit of torture' any more than there can be a 'little bit of rape'. There is no 'good' and 'bad' torture, any more than there is 'good' and 'bad' child-abuse. Torture is a moral-ethical crime which corrodes the humanity of not just the victim and the perpetrator but also of the indifferent bystander. It is an aberrant practice which

should have been left behind in the dark past of humankind.

Asia needs a new politico-social paradigm which re-sensitises us to torture, de-normalises the practice, ends its trivialisation and places it squarely on political and public agendas, on par with other anti-democratic practices and rights violations. Torture will persist in Asia only so long as there is no public interest and no popular pressure from within to end it.

The poor, racial/religious minorities, oppressed castes and women are more likely to become victims of torture. As these vulnerable segments form majorities in most Asian countries, the possibility of turning torture into a popular issue with political and electoral gravitas exists. For that to happen, the battle against torture must be relocated to seminar-circuits and conference rooms in the villages and townships of Asia and the habitats of those people most likely to be victimised by it. The anti-torture battle must be redefined from being an esoteric matter to an issue of central importance to trade and peasant unions, students and women's organisations, religious and ethnic minorities and oppressed castes.

For most of human history, from nations in the East to nations in the West, torture was an accepted practice in statecraft. Its outlawing began with the French Revolution. The fight against torture in Asia will have to draw politico-ideological strength from anti-torture measures enacted by every society and anti-torture battles waged by every people. The "Eastphalian dystopia", currently vogue in parts of Asia, may become a major impediment to the battle against torture on the continent. This Asian remake of Westphalia seeks to use national sovereignty to divorce the continent from the universal struggle to win and maintain

democracy, human rights and human dignity. By enshrining anti-democratic systems, consisting of super-powerful rulers and utterly subjugated citizens in patriotic or nationalistic discourse, Eastphalia will create viscerally enabling environments for torture.

The war against terror has caused the resurrection of pro-torture sentiments even in the West. In Asia, it has provided torture-supporters with a potent justification for their position. Fear dehumanise the 'Other' and justifies the unjustifiable in the name of nation or family, patriotism or tradition. Fear also reduces us to reacting defensively and pre-emptively, causing us to disregard the commonality of our human existence. Where fear and hatred of the 'Other' exist,

torture is made possible. Illegalising torture is a necessary but insufficient condition for a truly democratic society. Torture must be *de-legitimised* as well, politico-psychologically and socio-culturally. Before slavery could be combated successfully in the US, it was necessary to dismantle the myth of the 'happy slave'. Before child labour was abolished in England, arguments about its economic necessity had to be debunked. Torture will survive so long as we fail to change the political and socio-psychological landscape conducive to the practice. The "ideas battle" over torture must first be waged and won for other political battles to succeed.

Tisaranee Gunasekara is a Sri Lankan columnist based in Colombo.



Caste-based discrimination

Never compare caste-based discrimination and slavery....

Caste-based discrimination is worse than slavery....

A slave can win her/his freedom, whereas caste follows you from the womb to grave

Speak against all forms of
DISCRIMINATION

Asian Human Rights Commission

COVER STORY: INDIA | NARRATIVES

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INDIA: THIRST FOR DEMOCRACY

The Asian Human Rights Commission has reported innumerable cases of arbitrary arrest, detention, torture, and extra judicial killings of citizens at the hands of the police. Such acts which are illegal under international and local law yet have taken place at different police stations all over India in the past few years. The use of torture by the Border Security Force (BSF) is an immense threat to the security of the people. The negligence, inaction and complicity of the Indian police and other security forces have obliterated the enjoyment of fundamental freedoms of innumerable ordinary lives in India. The incidents that have been documented must be investigated, perpetrators suitably punished, and steps taken to ensure that such incidents do not recur.

India is known as the largest democracy in the world, but when one closely observes the lives of ordinary people, such title becomes empty boast. In this issue, we present nine cases from India, mostly from the state of West Bengal, where we have documented senseless brutality by the paramilitary forces against unarmed individuals.

"Detaining the relatives of a suspect or an absconder is a common but illegal practice, followed by the law enforcement agencies in India. The police had no reason whatsoever to detain the victim and her child at the police station for a day."

WEST BENGAL: Woman commits suicide after suffering from police abuse

Ms. Mithu Dey was abused and assaulted in the presence of several villagers by personnel of the Kandi Police Station. The police raided her house on 3 August 2011 in search of her husband, who was wanted in a criminal case. Without any arrest warrant, Mithu Dey and her minor son were taken to Kandi Police Station, where they were further subjected to torture, before being released the following evening. Soon after returning home, Mithu hung herself in her room, reportedly being unable to overcome the mental and physical trauma she had suffered at the hands of the police.

According to information from the Banglar Manabadhikar Suraksha Mancha (MASUM), a human rights group in West Bengal, Mithu Dey was abused and assaulted in the presence of several villagers by personnel of the Kandi Police Station who raided her house on 3 August, 2011, in search of her husband, who was wanted in a criminal case. Without any arrest warrant, Mithu Dey and her minor son were taken to Kandi Police Station where they were further subjected to torture, before being released the following evening. Soon after returning home, Mithu hung herself in her room, reportedly being unable to overcome the mental and physical trauma she had suffered at the hands of the police.

The victim's husband Mr. Rajkumar Dey is an accused in connection with a criminal case (no. 318/2011 dated 3 August, 2011, under sections 302/201 of the Indian Penal Code). The case was registered for the murder of Sukumar Dey, a relative of the victim. Since the lodging of the case, Mr. Rajkumar Dey started to hide due to fear of police harassment.

At the time of Sukumar's murder, he was

at the residence of Ms. Binapani Dey, Rajkumar's mother. She used to live alone as there was an allegedly uncomfortable relationship between herself and her son. Every night one of her relatives or someone from the village used to stay at her residence with her. On the night of Sukumar's murder, he was the one staying with her. The villagers suspect Rajkumar of the murder as he was not seen in the village since then.

The Kandi police visited Rajkumar's house but could not find him. On August 3, at about 11 am, police personnel Sub-Inspector Mr. Premashish Chattaraj, Sub-Inspector Mr. Haralal Biswas and female constable Kakali Mukherjee again raided his house, but again could not find him. They became furious and ransacked the house. They also allegedly assaulted Rajkumar's wife and son. According to Mithu's neighbours Ms. Sunita Dey, wife of Mr Soumendranath Dey and Ms. Parvati Dey, wife of Mr Jagabandhu Dey, police constable Kakali Mukherjee was instructed by the two Sub-Inspectors to grab Mithu's hair and slap her face while asking for the whereabouts of her husband. The police then forcibly took Mithu and her son Sourav to the police station, where they were illegally detained. There, under the pretence of interrogation, they were tortured.

Mithu and Sourav were released on August 4. Unable to bear the trauma of the humiliation and torture she suffered, Mithu committed suicide that night, as reported by her family members and the local villagers. An unnatural death case was registered at the police station (no. 175/2011 dated 5 August 2011). The post mortem examination was held on the same day at Kandi Sub-Divisional Hospital. The doctor who conducted the examination, Dr. Hansaraj Chattopadhyaya refused to disclose the cause of death to MASUM.

When MASUM visited the Kandi Police Station on August 7 to inquire about the

police atrocities committed against Mithu, Inspector-in-Charge Jotish Chandra Roy only said he was not present at the station on that day, and would not disclose any further information regarding the incident.

We have learnt that Rajkumar surrendered himself to the court and is presently in custody. The whereabouts of Rajkumar's mother and son are presently unknown.

Detaining a person with the intention to force the surrender of a relative is an offence under Section 348 of the Indian Penal Code, 1860. Similarly, voluntarily causing hurt to a person to extract a confession is also an offence punishable under Section 330 of the Penal Code. If found guilty, the former offense calls for a mandatory imprisonment that may extend to three years, and the latter for imprisonment up to seven years.

Detaining the relatives of a suspect or an absconder is a common but illegal practice, followed by the law enforcement agencies in India. The police had no reason whatsoever to detain the victim and her child at the police station for a day. In addition, they have also tortured the victim at the time they searched the victim's house and as alleged, at the police station. It is unfortunate that the victim killed herself after release from custody. The fact that the victim committed suicide immediately after her release from custody, is an aggravating factor that has to be taken into account while the case is investigated. If the investigation proves that the reason for the victim to commit suicide, is the torture and the resultant shock the victim suffered, from being illegally detained with her child at the police station and of being tortured, the police officers responsible for the crime are also punishable for yet another crime, under Section 306 of the Penal Code, for abetting suicide. The offense carries a punishment of imprisonment that may extend to a period of 10 years and fine.

Above all this, the police have no legal authority to detain a minor at the police station, as it has reported in this case.

It is reported that the police have not kept any details as to the detention of the victim and her child at the police station. This is also a usual practice the police follows in India in order to illegally detain persons. Despite repeated directions from the Supreme Court of India, the latest in the D. K. Basu case, which even led to a comprehensive amendment of the Criminal Procedure Code, 1973, the police fail to comply with every statutory provision required to be observed while arresting and detaining a person. This case is one more unfortunate example of illegal and inhuman practices of the police.

WEST BENGAL: BSF in West Bengal once again show how ruthless they are

This is yet another incident of savagery by the Border Security Force (BSF) from Murshidabad district, West Bengal. This time, the BSF is accused of having intentionally refused to take an ailing woman to the hospital to save her life. While the lady was bleeding profusely, her husband pleaded with the BSF to let them pass. The BSF refused, and assaulted the husband and shouted literal filth at the couple. The village public gathered and protested against the BSF behaviour and tried complaining to the senior officers who arrived at the scene. The BSF, however, threatened the public that they will fire at them unless they disperse.

"My wife was crying at the time. The two BSF officers also used slang language to my wife and threatened to beat her too. Within 10-15 minutes after that, my wife became unconscious due to heavy bleeding."

Later, the BSF arrested four persons, tortured them and then let them go. MASUM reports that now there is huge presence of the BSF at Char Parasur village, to which many villagers who protested against the BSF belong. The males in the village, due to fear of the BSF, have fled. The tense situation continues today and could result in loss of life if an immediate and sensible intervention is not made to diffuse it.

A translation of the complaint made to MASUM by one of the victims in the case, Mr Sirajul Mondal, is provided below:

I am Sirajul Mondal, aged 28 years, son of Kuddus Mondal, residing at Char Paraspur Sushil Colony, Dayarampur-Paraspur post, Murshidabad district. I am residing at the abovementioned village at the India - Bangladesh border area, which is on the eastern side of river Padma. On 3 October, 2011, my wife Tuluara Bibi alias Tulu became sick due to Menorrhagia (heavy and prolonged menstrual bleeding) and I started fearing for her life. So I decided to take my wife for immediate treatment that she required. I took her in a Donga (a tiny boat made by tin). We soon reached near outpost number 2 under the Farazipara Border Outpost of the BSF. Two BSF personnel were posted there. I showed the officers my voter identification card and requested those two officers to allow us to cross the river Padma to go to Sadikhanr Dearh Hospital. The officers made an entry of our names in their register book. They provided us a serial number "53" and asked us to wait at outpost for two hours. I informed them that the situation of my wife's health is so critical and requested them to allow moving my wife as early as possible. Hearing this, the two BSF personnel attacked me with the sticks in their hand by saying, "Teri mother chod" (f**k your mother), "Bohin chod" (f**k your sister). Hearing this, my wife came down from the Donga and appealed to the BSF officers to let us go. My wife was crying

at the time. The two BSF officers also used slang language to my wife and threatened to beat her too. Within 10-15 minutes after that, my wife became unconscious due to heavy bleeding. Suddenly two women from our village (1) Ms Hasina Bibi, wife of Jahangir Mondal and (2) the wife of Mr. Ejmal Sk. came to the spot to go to Roypara and they poured water on my wife's head. When my wife regained her consciousness, they took her back into the Donga.

By this time, many people came to the Outpost to cross the river. They realized that my wife was in a critical condition and to save her immediate medical help was needed. Some of them sent message to the villagers of the Sushil Colony. Following this, about 300 people gathered at the Outpost. They requested the two BSF officers on duty to release us immediately. The BSF officers did not pay any heed.

Then the mob became furious and told me to run away with my ailing wife. When we came to the middle of the river, the BSF started indiscriminate baton charging of the people who had gathered there. However, the people took all the boats and crossed the river, reached Roypara and assembled and decided to organize a 'road blockade' to protest against the continuous harassment by the BSF.

When villagers were assembling at the public road near Ghoshpara bridge three BSF vehicles reached there and the personnel prevented the people from barricading the road. Suddenly, the 2I Company Commandant from the 91 Battalion showed up in a vehicle. Seeing this senior officer, the villagers started narrating their concerns of torture and humiliation of the villagers by the BSF. And, while the villagers were busy talking to the senior officer, BSF personnel arrested four people from Char Paraspur village, namely, 1) Mr. Intaz Mondal son of Arzan Mondal; 2) Mr. Ekram Mollah son of

Mr. Nazir Mollah; 3) Mr. Nuru Munshi son of Elahazi Mondal; and 4) Mr. Sabdal Mondal.

In the meantime, Mr. Dwijen Pal, son of Phani Bhusan Pal of Roypara, was arriving on the spot. The BSF arrested him too. All of the villagers were severely beaten with sticks. They were slapped, subjected to punches and fists, and assaulted by the BSF officers. The officers then took them to Farazipara BSF Camp. The BSF officers present there threatened to fire at the mob. Seeing the aggressive attitude of the BSF, the people fled.

The four persons who were arrested were mercilessly beaten at BSF camp. Mr. Dwijen Pal was severely bleeding from injuries he had sustained all over on his body. Hearing the news that Dwijen Pal was inhumanly tortured, the villagers of Roypara and Palpara, hundreds in number, reached the BSF camp and talked with Company Commandant of the BSF and informed him how an innocent person, Mr. Dwijen Pal, was tortured.

By this time, the Camp Commandant of Char Bhadra Border Outpost took the signature of Mr. Dwijen Pal on a paper in which it was written that he was not tortured by the BSF and only then released him. Within a few moments, other three detainees were also released. But Mr. Sabdal Mondal was forwarded to Jalangi Police Station from where he was forwarded to Sadikha Dearth hospital for routine check-up. However, the doctor at the hospital recorded "no injury found" in the medical certificate. At the hospital, there were a couple of police personnel and some BSF officers present at the time. From the hospital, Mr. Mondal was sent to Chief Judicial Magistrate Court at Baharampur with false charges leveled against him.

Now the Char Paraspur village has a huge BSF presence. All the males have fled

either to Bangladesh or to other adjoining areas. Besides this, the BSF has seized all the boats and taken them to Farazipara BSF camp and also to other BSF posts. The life and livelihood of women, children and the elderly people of Char Paraspur is now under threat. Since the village is situated on the other side of Padma River, people residing at the village are completely denied their means to go to the market, hospital, schools, or colleges. Neither can they go to their relative's house nor can they visit the villagers.

On 4 October, I admitted my wife at the Sadikhan Dearth hospital. On 5 October, I went to the Jalangi Police Station to lodge a complaint against the BSF for atrocities they have committed. Mr. Shyama Prasad Saha, Sub Inspector of Police did not receive my written complaint; rather, he threatened my arrest. So, I ran away from the station.

At this moment, my wife is being treated at Sadikhan Dearth hospital. Till now I have to bear about Rs. 5000 for her treatment. On other hand, my two children and aged parents are now at Char Paraspur Sushil Colony. I am very confused. I am a victim of torture and harassment by the BSF. I fear my aged parents and my children would die of starvation if I cannot reach them. I have no contact with them.

In these circumstances, I pray to your good self to make a detailed investigation and punish the guilty BSF officers so that I can get justice.

WEST BENGAL: Two persons arrested and tortured in West Bengal

Part 1: Mr. Dhiren Mahato, son of Mr Suren Mahato, resides at Nuniakundari village, within the jurisdiction of Jhargram Police Station in Paschim Medinipur district of the Indian state of West Bengal. The state police, accompanied by a team of officers from the

Joint Force arrested Dhiren on 17 July, 2011, from a local tea-shop at Bodhna market, near Banshtala Railway Station, within the jurisdiction of Jhargram Police Station in Paschim Medinipur district. The Joint Force is a team of government security agencies constituted to deal with the Maoists in West Bengal. The Force reportedly comprises of officers from the Border Security Force, Central Reserve Police Force, Eastern Frontier Rifles, and other armed forces of the government.

Dhiren had gone to the market for shopping household goods. After shopping, Dhiren went to a nearby teashop. At the same time, police officers from Manikpara Police Outpost arrived there, accompanied by officers from the Joint-Force. They surrounded the entire market. The officers reportedly approached Dhiren and ordered him to get into their vehicle. Dhiren refused to comply as he did not know why he is been asked to accompany the police and where they were headed. Upon refusal, the officers assaulted Dhiren and dragged him into their vehicle. The police and Joint Force left the place with Dhiren.

At the time of arrest, the officers did not issue a memo of arrest, inform Dhiren why he was taken into custody, or tell him where he was being taken. No memo of arrest was prepared and family members of the victim were not informed about the capture of the victim by the police.

Since Dhiren did not return home, as expected by the family, his family went to the Manikpara Police Outpost to enquire about Dhiren. The police officers at the outpost did not, however, provide the family with any information concerning Dhiren. And, they did not acknowledge the arrest. On 18 September, the family went to Jhargram Police Station and the local court in Jhargram in search of Dhiren. However,

they received no information about Dhiren. On 19 September, Dhiren's mother, Bedan Mahato, submitted a written complaint before the Sub-Divisional Officer, Jhargram, concerning the illegal detention of her son. The officer received the complaint. However, no action followed.

Then on the same day (19 September), the family came to know that Dhiren had been produced before the Additional Chief Judicial Magistrate, Jhargram, Paschim Medinipur by the Jhargram police. The family also came to know that the police had by now named Dhiren as an accused in Jhargram Police Station case no. 32/2011 dated 6 February, 2011, registered under sections 342/364/511/307/379/34/506 of the Indian Penal Code, 1860. This case is based upon the complaint by a cement company named Rashmi Cement Limited. Dhiren's name is not mentioned in the complaint, which speaks about alleged criminal acts committed by Maoists.

The court did not release Dhiren on bail. The allegation that the police tortured Dhiren at the time of arrest and while in custody is not considered until date or investigated. There has been no action against the police officers or against the Joint Force for arresting Dhiren breaching all legal formalities to be complied by the officers at the time of arresting a person.

Part 2: Mr Amiya Mahato, son of Mr Sadananda Mahato, is a resident of Kaimashole village, within the jurisdiction of Manikpara Police Outpost of Jhargram Police Station in Paschim Medinipur district of West Bengal state. Amiya works at a mineral water bottling unit at Chhanapara.

On 20 June, 2011, at about 5 pm, the Officer-in-Charge of Manikpara Police Outpost raided Amiya's house. Some men in civilian uniform accompanied the police officer. The

men were armed. When the officer arrived at Amiya's house, his wife was at home. The officer asked Amiya's wife about Amiya's whereabouts, while at the same time breaking household articles and ransacking the house. The men allegedly took gold ornaments kept at the house and some documents of material value from a cupboard by breaking it open. No recovery reports were prepared for the taking of the documents or of the ornaments. The men and the officers restrained Amiya's wife from entering the house and at the same time continued questioning her. They asked her whether her husband worked at the mineral water bottling unit for which Amiya's wife answered 'yes'. Then the officer and the men left the house and arrested Amiya from the mineral water bottling unit.

As in the Dhiren's case, no arrest memo was issued. Neither did the officers inform Amiya or the persons present at the time of arrest the reason for Amiya's arrest, nor did they make clear where he would be taken. Some workers at the unit immediately went to Amiya's house and informed his wife about what had happened. Hearing about the arrest of his husband, Amiya's wife went to the local police station in search of the victim. However, the officers did not allow her to enter the station. Amiya's wife went to Jhargram courts on 21 June, and 22 June expecting that her husband would be produced in the court. However Amiya was not produced in court.

On 23 June at about 9 am, Amiya's wife once again met with the Officer-in-Charge of Manikpara Police Outpost and enquired about her husband. The officer completely denied the arrest. On the same day Amiya's wife submitted a written complaint to the Sub-Divisional Officer, Jhargram Subdivision alleging that her husband was illegally arrested and detained. On that same day, police officers from Manikpara Police Outpost and officers from the Joint

Force brought Amiya back to his house. The police officers brought out Amiya from their vehicle and brutally assaulted him in front of his family members. Then they forced Amiya to sign papers on which nothing was written. The officers then proceeded inside the house and re-emerged with a "sabal", an iron hand tool used for digging, a "gaiti", another hand tool made of iron and wood also used for digging, and some batteries. They took these things with them and went away with Amiya.

On 24 June, the police produced Amiya in the court of Additional Chief Judicial Magistrate Court, Jhargram. The police produced Amiya in court, implicating him in a case. The case is registered at the Jhargram GRP Police Station as case number 5/2010, dated 25 May, 2010, registered against "unknown persons" under sections 427 of the Indian Penal Code, 1860, sections 150 and 151 of the Indian Railways Act, 1989, and sections 3 and 4 of the Explosive Substances Act, 1908. It is reported that later the Central Bureau of Investigation also included sections 212, 323, 325, 326, 307, 320 and 201B of the Penal Code and sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967. To the best of AHRC's information, Amiya is still in detention.

On 24 June, Amiya's father filed a written complaint about the torture the police have committed against Amiya – that too, at least on one occasion, in full public view – to the Sub-Divisional Officer, Jhargram. The officer accepted the complaint into records. However, no action has been taken.

KERALA: Police assault a tribal woman

It is reported that Mrs Paru, aged 65 years went to the Malakkapara Police Station concerning a complaint she had filed at the station regarding theft at her home. The case was settled at the police station and the

suspect admitted the crime and handed over the stolen articles from Paru's house at the station. However, the Assistant Sub Inspector of Police caned Paru inside the police station in which Paru suffered injuries. The case, when brought to the attention of the State Legislative Assembly, caused heated debates about the manner in which the state police behave and the impunity the force enjoy for the atrocities they commit.

The victim in the case, Paru, is the member of a tribal community living near Sholayar Power House, near Peringalkuthu in Thrissur district, Kerala state. Since the death of her husband, Neshamani, Paru lives alone. Paru receives a pension of Rs. 6000 since the death of her husband. On 4 October, Paru had visited the nearest town, Chalakkudi, to collect pension from the bank. On the way back home she purchased a mobile telephone, a DVD, and a silver anklet for her granddaughter from the pension money. Along with these purchases, Paru still had Rs. 2500. Paru reached home at about 4pm.

On the same day night, Subish, a neighbour had come to Paru's house to watch television. Paru had slept by the time Subish left. Sometime during the night when Paru woke up, she saw that the cupboard in which she had kept the new telephone and the balance money was lying open. Paru realized that the money and the telephone had been stolen from the cupboard. Paru immediately went to the house where Subish's elder brother Vinish stays. However, Subish was not there.

On 6 October, Paru went to Malakkapara Police Station and lodged a complaint. A young police constable, who was at the station, recorded Paru's complaint and promised Paru that when the Assistant Sub-Inspector arrives, he will seek permission from the officer to investigate the complaint. Paru later received information that she should present herself at the Malakkapara Police Station on the morning of 10th October.

Accordingly, Paru went to the police station accompanied by her son-in-law Bagyaraj and nephew Sudhir.

At the police station, Paru met Subish, Vinish, elder sister Pushpa and her husband Mani and their son-in-law Manikandan. At the police station, Assistant Sub Inspector Mr. Joy was present, and in his presence, Subish admitted that he had taken the money and the telephone. Subish returned the telephone, and said that he would return the money soon. Then Paru and Subish shook hands and decided to leave the station.

However, when Paru shook hands with Subish, Mani and Manikandan said that instead of shaking hands, the police should cane Paru. Hearing this, the Assistant Sub Inspector Joy grabbed a cane and hit Paru on her right thigh. Then the officer pulled Paru holding her right hand and forced her on to the floor. The officer caned Paru on her foot until it started bleeding. Those who accompanied Paru could do nothing since they were afraid of the officer. Paru soon lost consciousness and the officer stopped canning Paru. Paru's relatives carried her out from the police station and sprayed water on her face for her to regain consciousness. The officer emerged from the station and ordered that Paru should sign a register kept at the police station. Due to fear, Paru signed the register, in which it was written that the case between Paru and Subish was compromised and thus Paru has no further complaints.

Paru and her relatives returned home. However, once at home, the pain on Paru's legs increased and Paru soon became unable to walk. On 12 October, Paru went to Chalakkudi and was admitted at the Chalakkudi Taluk Hospital for treatment. Paru is still at the hospital.

The incident was brought to the notice of the state legislative assembly, and there was a big debate between the government and the

opposition. The government has promised that the incident would be investigated. However, Nervazhi and the AHRC suspect that neither will there be any proper investigation in the case, nor will the officer be punished.

RAJSAHI: BSF strikes again in West Bengal, murdering a man by breaking his skull

“The victim’s left eye was brutally injured & there was bleeding on the left eye. Two fingers of his left arm were completely smashed & there were numerous marks of beating on the body, as if Khalil had been beaten mercilessly with wooden sticks all over. They sent Khalil’s body to Lalbagh hospital for post mortem examination, for which the family had to pay.”

The victim in the case, Mr. Khalil Sk., is a local medical practitioner who went across the border to treat his ailing relative. It is reported that the victim, along with his relatives, waited to cross the border, and soon after they did, the Border Security Force (BSF) officers took the victim into custody. The victim was later found dead with his skull fractured. The police have refused to register a complaint on the case.

The victim is a village medicine man, offering Ayurvedic treatment to the villagers, though he has no official medical degree in Ayurvedic medicine. MASUM’s fact-finding mission reveals that on 7 October, 2011, Khalil came to know that one of his relatives, residing in Boroban village, in Rajsaahi district of Bangladesh, had fallen seriously ill. Khalil, accompanied by his brother Mr Mikchar Sk. and brother-in-law Mr Mustafa Siraj, went to the relative’s house on 7 October, for which they crossed the Indo-Bangladesh border

located near BSF Outpost no. 1 and 2 under the jurisdiction of Char Mourasi BSF camp.

After visiting his ailing relative, the victim, his brother Mikchar and brother-in-law Mustafa came to the border in the evening on 8th October. But at that time they did not get an opportunity to cross the border which caused them to wait for hours there. At about 11 pm they were able to cross the border, but just when they came near to the BSF Outpost no. 1 and 2 the BSF officers (about 5 of them) standing there chased them away. Mikchar and Mustafa were able to flee, but they witnessed the victim being apprehended by the BSF personnel.

Mikchar and Mustafa, at about 2.30 hours (on 9 October), informed the victim’s wife Ms. Parvina Bewa that the BSF had arrested Khalil. They informed her that they had witnessed Khalil’s arrest, and that when the BSF found them near the outpost the officers chased them and while Mikchar and Mustafa were able to run away Khalil could not.

On the same day, at about 10 am, Parvina went to the BSF outposts 1 and 2 in order to meet her husband. There she came to know from the local persons that a dead body was lying between the BSF Outposts 1 and 2. Parvina soon got notice that the said dead body was of her husband. Then, the victim’s relatives, the BSF personnel from Kaharpara BSF Border Outpost Company Head Quarter, and the police from Raninagar Police Station arrived on the scene. At about 8 pm, the victim’s body was brought to the hospital where he was declared dead. The victim’s body was then brought to Raninagar Police Station.

Parvina and several other persons including the victim’s relatives who saw Khalil’s body noticed that the body had several injuries, including a skull broken at several places, and blood oozing out from injuries. The victim’s left eye was brutally injured, and

there was bleeding on this eye. Two fingers of Khalil's left hand were completely smashed and there were numerous marks of beating on the body, as if it Khalil had been beaten mercilessly with wooden sticks all over. Khalil's body was sent to Lalbagh hospital for post mortem examination, for which his family had to pay.

The police of Raninagar Police Station registered a case of unnatural death, vide Raninagar Police Station UD Case no. 20/2011 dated 9 October, 2011. The post-mortem examination was done at Lalbagh Sub-Divisional Hospital, Murshidabad, on 10 October vide PM No. 211.

On 17th October, at about 8 am, the victim's wife, along with her 3-year-old daughter Khadija and one-and-a-half year old son Parvej, went to Raninagar Police Station to lodge a complaint against the BSF officers of Outposts no. 1 and 2 for murdering her husband. However, the duty officer of Raninagar Police Station, Mr Sirajul Salehin, Assistant Sub Inspector, received the written complaint, but did not register a case. After waiting at the police station until about 12.30 pm, MASUM's staff member took Parvina to the office of District Superintendent of Police at Baharampur, where a written complaint was ultimately received. However, the officer did not provide any reference number for the complaint. MASUM reports that the state police are yet to take any action upon the complaint.

WEST BENGAL: BSF strikes again, this time, knifing a person

The victim in the case is Mr. Abdulla Gazi, son of Mr. Chamchel Gazi, aged about 27 years, is a resident of Gunrajpur village, under the jurisdiction of Swarupnagar Police Station in North 24 Parganas district of West Bengal. The victim lives with his wife, two children, and his aged mother. The victim provides for his family by working as a farm

labourer. MASUM's fact-finding reveals that Gazi also sometimes worked for cross-border smugglers, getting paid for trafficking cattle across the Indo-Bangladesh border.

On 25 August 2011, at about 3.30 hours, Gazi, having been engaged by the smugglers, was transporting cattle from India to Bangladesh. It is alleged that the BSF officers stationed at Gunrajpur BSF Border Outpost were assisting the smuggling; in lieu of the bribes they accepted. The cattle were kept in a shed located between Gunrajpur BSF Border Outpost, gates 14 & 15. Without warning, an altercation erupted between the BSF and the smugglers who were waiting across the border in Bangladesh. Without warning, the BSF started firing. As a result, a Bangladeshi boy named Laltu, who was in Indian territory at the time, was hit on his leg. Laltu, seeking protection, ran into a nearby village and some villagers took him to the hospital.

It was also revealed that during the incident, the BSF officers knifed Gazi in his lower abdomen and left him for dead at the spot. A person from the locality, Mr. Mostafa Baidya, son of Mojam Baidya, residing in the same village as that of the victim saw the victim and took him to the nearest safe place, a village in Bangladesh territory. Then some persons in the village admitted him in a nursing home in Jashore, Bangladesh. Baidya subsequently informed the victim's wife Ms. Selima Gazi about the incident. One Mr. Khalek Sardar, son of Mr Ebtullya Sardar, who also came to know about the incident, informed Selima of what had happened.

"The BSF officers knifed Gazi in his lower abdomen and left him for dead. A person from the locality, Mr. Mostafa Baidya, son of Mojam Baidya, residing in the same village as that of the victim, saw the victim and took him to the nearest

safe place, a village in Bangladesh territory."

Mr. Jitendra Singh, Company Commander of 'F' Company, 120 Battalion of the BSF, filed a written complaint at Swarupnagar Police Station on 25 August 2011 at 9.15 pm (after about 18 hours of the incident) accusing 1) Mr. Laltu Mondal of Bangladesh and 2) Mr. Abdulla Gazi, based on which Swarup Nagar police registered a case, numbered 216 of 2011. The case was registered for offenses punishable under Sections 147, 148, 149, 186, 353, 332 and 307 of Indian Penal Code 1860 and Section 14 of the Foreigners Act and Section 12 of the Indian Passport Act.

MASUM's fact-finding revealed that a person, namely Mr. Arshad from Sultanpur, Bangladesh, reportedly helped the victim get treatment and perhaps knows the present whereabouts of Gazi.

However Gazi's wife Selima has not been able to contact her husband till date and she has no clue about his whereabouts. She does not know whether he is dead or alive. Selima is poor and hence she does not have any means to search for her husband in Bangladesh. Selima and the family members of the victim are anxiously awaiting Gazi's return. At present, the family does not have any means of subsistence and the victim's aged mother has taken up begging to find means to run the house-hold. Selima has lodged a complaint with the Superintendent of Police, North 24 Parganas, against the perpetrator BSF personnel, but until now the police have taken no action on the complaint.

WEST BENGAL: Student tortured in West Bengal to extort confession

The AHRC has received information from MASUM concerning another case of police brutality by personnel of Raninagar Police

Station, under the captaincy of Sub-Inspector Nilanjan Roy of Raninagar Police Station, against 19-year-old Golam Mujtuba and a few of his friends from Char Majhardiar Village. Such impunity on the part of police personnel, tasked to uphold the law, is morally and legally unacceptable. We urge you to write in to appeal to the relevant authorities to take actions against the police personnel responsible for these violations against the victim's constitutional and human rights.

An inquiry undertaken by MASUM reveals the following facts.

The victim, Mr Golam Mujtuba, is an engineering student of a local college at Narsinghapur. His father, Mr Nazrul Islam, is a respectable and educated figure who tries hard to educate his two sons.

On 3 March 2012, on his way home from his hostel at Narsinghapur College with friends from the same village and chatting in the vicinity of Mr Badal's shop at Mahardiar Village, Mr Nilanjan Roy, Sub-Inspector, and seven constables set upon Golam from the Raninagar Police Station. Golam and his friends were shoved towards the policemen's parked vehicle without being informed of the reason for their arrest. The personnel physically abused the youth during the arrest and on the way to Raninagar Police Station in the presence of Mr Sahaban Ali and other villagers.

"Without state intervention and international pressure, Golam and his community face for the foreseeable future continued abuse of their freedoms and physical persons."

The youths were conducted to the Raninagar Police Station around 8.30pm. While in custody, the youths were denied warm clothes and were again physically and mentally tortured. They were not provided any food or water throughout their detention. The police were reportedly attempting to extract confessions concerning an earlier scuffle, which broke out a few days before at the adjoining Danrakaci Village, which is also under Raninagar Police Station.

The youths were driven from Raninagar Police Station at 1am on 4 March after the police had obtained their signatures on blank pieces of paper. They were forced to spend the night out in the open and returned to their respective home only hours later.

Golam Mujtuba visited a doctor at Sekhpara Village at 7am on 4 March. The doctor there concluded he had suffered severe mental and physical torture. The families of the other victims did not register complaints with the police concerning the illegal arrest, detention and torture due to paralyzing fear that the local police, who perpetrated the acts of violence in the first place, would react against such a challenge. Later, Golam's father gathered the courage to lodge a report with the Superintendent of Police of Murshidabad on 9 April and a copy of that report was sent to the Chairman of the West Bengal Human Rights Commission. Unfortunately, no action has been taken to date against the errant police personnel who detained and assaulted Golam and his friends.

The above case highlights several systemic faults in the police administration of Murshidabad:

1. Lack of justification for arrest, detention and physical trauma of victims, Golam Mujtuba and the friends that had been walking home with him that night;

2. Lack of transparency and accountability in judicial proceedings (e.g. coercing torture victims into signing blank pieces of paper with which charges could be fabricated and their "statements" presented);
3. Lack of responsiveness of the provincial authorities (in this case, the Superintendent of Murshidabad) to aggrieved locals who, despite the violations of their rights, demonstrate great courage and confidence in the system by lodging police reports

This general deviation from proper legal procedure is troubling. Such observations also sit uneasily against a backdrop of the guidelines laid down by the case of D K Basu. The police did not seem to have a legal document or memo requiring or justifying his arrest, did not subsequently inform the victims' family members their arrest and did not conduct the stipulated medical check upon arrest. Instead, they abused their positions of authority to physically injure Golam and his friends, to deprive them of food, water and adequate clothing, to extract blank pieces of paper with the victims' signatures on them and to detain them unreasonably. These actions violate the victims' right to security and liberty of person and right to be treated humanely while deprived of their liberty. These are individual rights set out in Articles 6, 7, 9 and 10 of the 1966 International Covenant on Civil and Political Rights (ICCPR), which the Indian state is signatory to in 1979.

Golam's father has already written to the Superintendent of Police, who has not taken any action to assist the victims and their families. Golam and his friends' only recourse appear to be to appeal to the very perpetrators who have in the first place violated their rights. Without state intervention and international pressure, Golam and his community face for the foreseeable future continued abuse of their freedoms and physical persons.

WEST BENGAL: Sexual perversion a manifestation of graver structural failures

An investigation conducted by MASUM yielded the following details:

Around 5pm on 18 April 2012 seven or eight policemen from Salar Police Station, three of which were identified as Mr Subrata Majumdar, Mr Sainik Tarafdar and Mr Pradip Roy forced their way into the house of Mr Chand Mohammad Seikh, a well-known leader of the local Congress Party. The police searched for Chand Mohammad Seikh but, unable to find him, became enraged and began verbally abusing the female members of the house. There had been no female police personnel present during this encounter.

The policemen from Salar Police Station threatened the family members of the victims “dire consequences” if the victim failed to present himself at the police station immediately, but did not disclose reasons for the attempted arrest and detention. It was revealed that the police had also come searching for two other men, Mr Sukur Seikh and Mr Fijoj Seikh.

That same day the victims took shelter in the house of Mr Imam Sheik in Samastipur village, having been harassed by the police. Mr Imam Seikh is the father-in-law of the second victim, Mr Sukur Seikh. The policemen from Salar Police Station got wind of the whereabouts of the three victims and at approximately 45 minutes past midnight on 19 April, a large group of police from Salar Police Station, led by Mr Sainik Tarafdar, Sub-Inspector of Salar Police Station, forcibly entered Mr Imam Seikh’s house and began ransacking the place. They arrested the victims and violently assaulted them with wooden sticks and rifle butts. The victims were tied with rope, forced into a police vehicle and driven away although no memo of arrest had been issued or reason given for the arrest.

Halfway to Salar Police Station, the police vehicle stopped. The victims were taken out of the vehicle and brutally beaten again. At Salar Police Station, the men were stripped naked and beaten yet again. The men were also forced by the police personnel to carry out degrading acts such as sucking on each other’s genitalia.

News of custodial torture quickly reached the community in the three victims’ village. The villagers soon began to protest the barbarity of the acts committed against the three victims still in detention. Subsequently, reports were made that the Superintendent of Police of Murshidabad visited Salar Police Station and ordered the three victims transferred to Kandi Police Station, where the victims were produced at the Additional Chief Judicial Magistrate Court, Kandi on the same day (19 April). The three victims were implicated in an old “pending” criminal case (vide Salar Police Station Case No. 36/2012 dated 20 March 2012 under Sections 325/326/307/34 of the Indian Penal Code).

The victims’ advocate made a written complaint before the Additional Chief Judicial Magistrate Court, Kandi against the police personnel of Salar Police Station who had perpetrated such atrocities against the three victims. In court, it was apparent that the victims had been physically abused – Mr Chand Mohammad’s wife, Ms Seherunnesa Bibi, saw that her husband could not even stand on his own and fell down when produced before the Additional Chief Judicial Magistrate. She also saw that the other two victims were unable to walk properly. She had asked Mr Sainik Tarafdar, who is Sub-Inspector of Salar Police Station and was present at the time, about the reason behind the victims’ poor physical condition. The Sub-Inspector was infuriated by her question and openly threatened to assault her as he had her husband. He kicked Ms Seherunnesa Bibi and slapped her face so hard she almost lost consciousness. She was immediately

admitted to Kandi Sub-Divisional Hospital. The Magistrate also gave instructions for the three victims to be provided proper medical treatment, so the three victims were brought to Kandi Sub-Divisional Hospital for treatment on the same day (19 April).

Ms Seherunnesa Bibi was discharged on 21 April. The doctor who attended to the three victims referred Mr Chand Mohammad Seikh to Berhampore New General Hospital after examining the victim, having determined the seriousness of his condition. Mr Chand Mohammad Seikh was admitted to Berhampore New General Hospital on 19 April and was discharged only on 4 May. The discharge certificate issued by Berhampore New General Hospital stated that Mr Chand Mohammad Seikh was “suffering from physical assault by police”. The other two victims, Mr Sukur Seikh and Mr Fijoj Seikh were discharged from Kandi Sub-Divisional Hospital on 28 April. The three victims were released on bail on 18 May on the condition that they were to present themselves at Salar Police Station every day.

The victims’ family members believe that the three victims were falsely implicated in the aforementioned criminal case by the personnel from Salar Police Station. Ms Seherunnesa Bibi, wife of Mr Chand Mohammad Seikh, submitted a report on 20 April before the Inspector-in-Charge of Kandi Police Station against the policemen from Salar Police Station for torturing and humiliating the victims while the victims were in their custody. On 7 May, Ms Hamida Bibi, sister of Mr Chand Mohammad Seikh, submitted a separate complaint to the Officer-in-Charge of Salar Police Station through registered post narrating the ill-treatment the victims endured at the hands of the police employed at that station and pleading for proper legal action to be taken against those perpetrators. To this day, the police and higher levels of administration have failed to act upon such findings and complaints

condemning the criminal behaviour of rogue police.

Mr Chand Mohammad Seikh had been a signatory to a written indictment sent to the Law Minister of the Government of West Bengal against the illegal activities of the policemen at Salar Police Station. As such, his family members are particularly sensitive to the political implications of the acts of violence against Mr Chand Mohammad Seikh. It is probable that the unlawful arrest and detention, torture and humiliation of Mr Chand Mohammad Seikh and the other two victims constitute a most malicious form of recrimination intended to discourage or punish them for moving to challenge the legitimacy and moral integrity of the police personnel at Salar Police Station. It is also likely that the criminal charges and evidence brought against the three men were fabricated. The Law Minister has not moved to ensure the safety of Mr Chand Mohammad Seikh and other signatories to the official complaint against police personnel attached to Salar Police Station.

Such impunity, violence and lack of transparency in prosecution procedures collectively suppress individuals’ freedom of expression, movement, association and deny their inherent right to liberty and security of person. The acts of the police personnel, entrusted with law and order, expected to be themselves moral exemplars of the society they regulate and given military and legal power to police the communities they live in, is nothing short of abominable. Yet the passivity of the central government to the suffering and persecution of these individuals is equally criminal, given the state’s undertaking to protect the fundamental and constitutional rights of the individual.

The Additional Chief Judicial Magistrate’s actions are commendable insofar as the victims were able to quickly receive medical

attention for injuries sustained, the Magistrate failed to take pre-emptive and preventative action to protect them from future custodial violence. The Magistrate did not order for a formal inquiry into the shady circumstances concerning this case, wherein the police have obviously opted for threats and intimidation to cover up their illegal activities and punish Mr Chand Mohammad Seikh for attempting to expose them. The other two victims were either also signatories to the same document incriminating the police of Salar Police Station and therefore also persecuted, or were, more likely, collateral damage in the enraged policemen's vendetta against Mr Chand Mohammad Seikh. The Asian Human Rights Commission (AHRC) has documented over the years numerous cases; this corpus suggests that such indiscriminating violence is commonplace in India.

*"India may yet, with the hope
and faith demonstrated by her
people, become a truly first world
democracy."*

It is mockery of the intellect for a national system to flaunt its democratic credentials yet lack space for peaceful protest and dissenting voices. Civil society has chosen to peacefully make its opinions known through avenues currently available to them: official media and governmental agencies, for instance. If such channels are closed off by the authorities, the risk of civil unrest will increase exponentially. This is an undesirable outcome for all involved.

The chicanery of a justice system unable to serve justice and protect the legal-constitutional rights of the individual is also laughable. The imperative for reform – institutional reformation to restore constitutional and legal safeguards for individuals – has never been stronger.

The Central Government must take up responsibility for constitutional guarantees and its international commitment to protect human rights; it is only by doing so can they legitimise their regime amongst the Indian people. Extra effort must be made to communicate and enforce chain of command and the most crucial guiding principles of rule of law. The local police force will also have to work hard to earn back the trust of the individuals living in areas under their jurisdiction through a combination of adhering to guidelines already provided by the Central Government, cultivating respect for the inherent dignity, rights and liberties of the individual, eradicating the culture of violence and impunity and has permeated paradigms and police procedures (through institutional reform) and situating through various programmes, activities and training the service of justice as primary motivation, purpose and end goal for the police force. India may yet, with the hope and faith demonstrated by her people, become a truly first world democracy.

Without urgent state intervention, it is unlikely that Mr Chand Mohammad Seikh, Mr Sukur Seikh and Mr Fijoj Seikh will ever be able to free themselves from the fabricated charges and the pernicious shadow of fear and shame that their treatment at the hands of the police of Salar Police Station will cast upon them for the rest of their lives. Without state intervention, it is likely that many more individuals demonstrating the same moral courage and conviction will tread the same psychologically, emotionally and physically devastating path these three victims have trod. Please act today to serve justice. Please act today to preserve humanity.

WEST BENGAL: Beaten by BSF, but, unlike Babu, still breathing

An inquiry undertaken by MASUM reveals the following facts:

Around 7am on 1 January 2012, Mr Krishna Mondal had been working his farmland when four BSF jawans from BSF Out-Post No. 9 under Harudanga BSF Camp came. The BSF jawans detained him and tied his hands behind his back with a rope without providing a reason for the arrest. They then assaulted the victim with the butts of their rifles, whereupon he fell to the ground. The BSF jawans continued to attack him by kicking him with boot-clad feet. The perpetrators even reportedly removed his clothes and continued to beat him with a slip of bamboo embedded with nails. All the while, the BSF personnel verbally abused the victim.

Krishna is lucky to be alive. Other victims of physical abuse by the BSF have not been so fortunate.

As a result of the brutal attack, Krishna sustained severe injuries and bled from numerous wounds all over his body. After the BSF personnel left, leaving Krishna almost unconscious, he was carried from the place by the witnesses comprising his brothers, Mr Jairam Mondal, Mr Arjun Mondal, Mr Sanatan Mondal, and their neighbour, Mr Bijoy Mondal. Krishna was immediately treated by a local doctor, Mr Siraj Sk.

The BSF jawans returned and threatened to kill Krishna if he attempted to lodge a complaint at the local police station, but Krishna's neighbours encouraged him to seek legal recourse. The victim's wife, Ms Anita Mondal, sent a written complaint to the Superintendent of Police, Murshidabad, by courier, explaining the entire incident and requesting that appropriate legal action is taken against the perpetrator BSF jawans. To this day, the police and others in the district/state administration have not taken action against the perpetrators.

Krishna is still in poor physical condition and unable to resume work. He is unable to arrange for proper medical treatment due to his poor financial condition. He was medically treated at MASUM's monthly medical camp VIC-TREE.

The above case highlights several systemic failures in the administration of Murshidabad in West Bengal:

1. The lack of transparency and accountability in the operation of the BSF, which breeds impunity and disregard for the law;
2. The pervasive, and oftentimes senseless, use of violence by provincial authorities against individuals within their jurisdiction;
3. The lack of enforcement and/or poor communication by India's central government of basic protocol amongst paramilitary forces such as the BSF;
4. The lack of complete responsiveness of police to aggrieved locals either due to fear of or collusion with the BSF, or an execrable apathy to the plight of the victim and his family

Krishna is lucky to be alive. Other victims of physical abuse by the BSF have not been so fortunate. Without state intervention or international pressure, the people of India face, for the foreseeable future, continued abuse of their freedoms and physical persons with no likelihood for justice to be served to those acting with complete impunity.

COVER STORY: INTERVIEW

Bijo Francis © AHRC Photo

WE ARE PATHFINDERS – BIJO FRANCIS

Bijo Francis of the Asian Human Rights Commission shares insight about his way of addressing the issue of torture in India. Mr. Francis refers to human rights defenders as ‘pathfinders’ when working against torture. “We have to find our own way of dealing with the issue, and there are no exact models that would work everywhere when working against torture,” says Mr. Francis.

The following is an excerpt of the interview:

How would you define Torture?

Torture, as with other crimes, is legally defined in the International Convention against Torture as acts by which severe pain or suffering, whether physical or mental, is intentionally inflicted on an individual to extract information or a confession, to punish for an act he or some other person committed or is suspected of

having committed, to intimidate or coerce to as a form of discrimination when pain or suffering is inflicted at the instigation, consent or acquiescence of a public official or some other person acting in an official capacity.

Torture also generally has a more fluid working definition which varies with context and according to existing local power structures. These power structures determine the use of intimidation and fear by power centres to control other actors. This working definition of torture accommodates varying intensities of physical and mental suffering in different geographical and cultural contexts, and is related very much to the imagining or conception of justice that prevails in any given society. Although discrimination, recriminations and inadequately developed or corrupted judicial systems are factors that predispose state agents such as the

police to carry out torture, torture can itself be an indicator of the possibility of justice in a particular society. If torture is utilized to extract confessions carrying inordinate weight in a criminal justice system, it would be easy to fabricate charges against that person and simply hurt him or her into an admission of guilt. Torture, in other words, is a manifestation of impunity and injustice in state-sponsored or state-affiliated agencies as well as in the wider society.

So the question of torture is not just a legal issue? How else is torture a problem, and what distinguishes it from ordinary crime?

Yes, torture is not just a legal issue, though without legal remedy, torture cannot be effectively addressed. The nature of the crime itself speaks for the fact that torture is just not a legal issue. Today, torture is held as a crime against humanity. It has a direct bearing upon the legal system as well as the social psyche of a society. Its practice negates all basic notions of justice, most importantly of equality and fairness before the law, presumption of innocence and a human's inherent dignity. It has also been established that torture is traumatic and has the capacity to permanently damage the psychological well-being of a person, irrespective of whether the person is a victim or a witness. Torture is, as such, not a crime that hurts only the victim, but also the perpetrator and everyone else who witnesses the incident. Studies conducted in psychology and psychiatry proves this.

"It is not the duty of the citizen, nor is the citizen even able, to prevent torture or to create a genuine justice system. It is the singular responsibility of the state, which possesses the means and mandate to enforce the law."

This means, for instance, in a country like India, where the practice of torture is endemic to police procedure, torturing a suspect or convict to intimidate, extract a confession or information has become a norm rather than the exception. Many police officers at the stations suffer severe psychological problems, making them unfit to protect citizens and property. Countless victims of torture also emerge from these same police stations forever scarred by their experiences.

Torture, being routine, is implicitly accepted as a means for investigation. Many law enforcement officers perceive torture as an essential tool, even if it has been shown to be an unscientific and crude method of investigation that even corrupts that standpoint of the investigating officers. It then becomes difficult to justify or prove the neutrality of the investigation. Victims are usually humiliated and animalised in order to make such violent methods justifiable; policymakers and bureaucrats to this day believe that there is nothing morally reprehensible in "pre-emptively" punishing a suspect, even if he has not yet been convicted. Even if the person was a convicted criminal, torture cannot be employed against that person – as a human being, he has an inherent dignity that other human beings must respect, having a moral duty to protect that dignity. By arbitrarily robbing another person of his dignity, we lose our own as well. Dignity and justice are abstract and indivisible fundamental principles that necessarily supersede the constructed legality of statutes – the human race either has it, or lacks it, altogether.

Are there perhaps institutional fault lines that are revealed through the practice of torture, and what does this mean for the countries and regimes involved?

Sometimes torture occurs due to a lack of

awareness about the serious criminality of the practice. Many law enforcement agencies, paramilitary and military forces may not even shy from admitting such practices exist. Imagine the magnitude of such insensibility extended to the policing of 1.2 billion people all over India in over 11,840 police stations. In 1892, Swami Vivekenanda called Kerala a lunatic's asylum after witnessing first-hand the extent to which caste-based discrimination had gripped society. With the practice of torture rampant in India, one could sadly attribute to the entire nation the same. And what about the rest of South Asia, where torture remains a non-issue?

Torture neither promotes democracy nor supports the rule of law. On the contrary, torture, whether openly or clandestinely used, undermines democratic governance. A state that condones torture cannot progress in any form because there is no judicial system the people can have faith in to protect their rights to life, liberty and security of person, to freedom of opinion and expression, of movement and residence, of association. Against the almighty state, the growth of civil society and platforms for dissent will be stunted and frameworks of justice weak. So you see, torture goes far beyond being a crime. It destroys teamwork, morale and conscience amongst those who carry it out, and irreversibly damages victims' bodies and psyche. Torture breeds anger, distrust and hatred for the authorities amongst the people who in the first place award them the legitimacy to rule. Such Machiavellian tactics therefore endanger existing regimes, divide communities and devastate national unity.

Perhaps you could give us an example from India?

In India, we have some of the worst justice institutions in the world. Many might attempt to counter this argument by quoting

a few judgments of the Supreme Court and the relative independency of the judiciary. Yet the judiciary in India can only appear better in comparison to perhaps the other countries in the South Asian sub-region. To begin with, torture is still not considered a crime in India, nor has it been outlawed. We boast the longest delays in adjudication, the most ill-trained or passive prosecutors and the shoddiest investigative processes. This will persist as long as the state considers the strengthening of justice mechanisms a threat to its authority. The appalling new law, The Prevention of Torture Act, 2010 proposed by the government of India against torture testifies to this. Torture is clearly not the only reason for this horrendous state of affairs. Yet it plays an important role in the deterioration of judicial processes and institutions in India. There is simply no validity in a trial based almost entirely on statements and confessions extracted under torture, and in criminal law that permits prosecution on the basis on such. India has developed its own style of witch hunting, and where is the justice in that?

"Human rights defenders are not omnipotent. They face restrictions, threats, frustration and exhaustion as the rest of humanity does."

By resorting to torture, police officers unknowingly cry out for more advanced training that will give them more effective interrogation techniques or a better understanding of the law. Police officers are themselves demoralised by the corruption of institutions and their work through poorly executed investigations, fabrication of charges manipulation of evidence and confessions under coercion - these make a mockery of their calling. Justice should in itself be as primary motivation and noble end

goal for law enforcement agencies. Having this conviction would inspire self-discipline and internal regulation that will restore the reputation of law enforcement personnel and agencies.

To expect justice where torture is routine is simply illogical. Any sort of legal and paradigmatic reform has to begin with the rooting out of such practices.

Why does the State commit acts of torture?

Torture, in very simple terms, is violence committed by the state against individuals or groups. Use of violence is a crude means to perpetuate fear. States resort to intimidation to maintain societal order; order as interpreted by the state or those who control the affairs of the state. Consider, for instance, the police. It is the state institution that has the most frequent and direct contact with the people. In many countries it is through the police the state runs its business of maintaining order. Yet the police can also be a terrifying force with which the state manipulates and silences its people. The police can be deployed to restrain the media, public opinion and movement that express sentiments opposing the government and its policies.

Torture just as effectively propagates hatred for authority, and this is a cost many authorities choose to bear when actively or passively complicit in such practices. Politicians and dictators worldwide condone torture by their own police and military institutions for two reasons. One, the acts are orders communicated to these powerful arms of the state from the centre eager to subjugate the entire population through threats, intimidation and fear. Second, political actors are unwilling to expose cracks in their own chain of command and desperate to maintain a semblance of control

over its various branches, and therefore does not admit to internal disobedience, rogue acts by officially state-endorsed and -funded agencies. The first scenario is more common. Crimes such as murder (mostly termed “extrajudicial, summary or arbitrary killings” in human rights discourse), torture, extortion, corruption, rape, enforced disappearances, kidnapping, robbery, formally abolished religious or caste-based discrimination are conveniently overlooked. Very rarely are independent and impartial investigating agencies engaged for inquiries into crimes that have been linked to the state and its actors, which means that perpetrators who occupy official positions and left conveniently to investigate themselves, a process that never results in anything more than a symbolic conviction, at best, and, in the worst and most usual case, recriminations against the individuals, families and civil society actors who dared speak out against the state agents who committed the crime.

What responsibility should the public bear in this, and how can citizens participate to prevent torture and restore genuine justice in the system?

It is not the duty of the citizen, nor is the citizen even able, to prevent torture or to create a genuine justice system. It is the singular responsibility of the state, which possesses the means and mandate to enforce the law. The general public could (continue to) speak out against injustice, yet this is neither feasible nor sustainable because of the lack of credible assurance to the average person that the person’s right to speak is protected along with the right to physical security and well-being, liberty and life.

This is where other civil society organisations such as the Asian Human Rights Commission (AHRC) and other grass-roots organizations could play a role. These organizations create

a safer space within which an individual who is concerned about an injustice could speak against it and, where possible, even obtain remedy. A large corpus of such reflections, opinions and personal narratives could in turn generate a local debate about a particular issue, torture, for instance. This is crucial for sustainable change to be worked – not through an external imposition of ideas and ideals, but through internal debate, crystallisation and internalisation of certain values and revolution in worldview.

In a country like India where you engage with local partner organisations, torture is a part of daily life. Over the past decade you have dealt primarily with human rights violations and, more specifically, the practice of torture. Do you have a specific framework or a model to deal with this?

Speaking against state sponsored violence – torture for instance – is not an easy task, particularly for those at the grass-roots level. Seeking remedy is even more dangerous. To work against torture is to directly oppose the established power structures in a given environment, often without any protection. Perhaps this is why there are precious few human rights organisations working against torture in countries like India. No single framework could effectively combat torture sans legal jurisdiction.

Work against torture on the ground will take space and time to develop in its highly specific political, geographical and cultural context, and is generally best conducted by locals for locals because locals understand that context and people best. Working with torture will and should be different from one country to the other, and could differ

even according to the state, province or district at hand. From personal experience, working against state-sponsored violence in Manipur invariably places a person in direct confrontation with paramilitary and military units operating under the protection of draconian legislations like the Armed Forces (Special Powers) Act, 1958. These units are notorious for their use of excessive force. Contrast this with the relative safety and peace of Kerala. We cannot study or work in Manipur with the same framework as we do in Kerala. The people think, speak, act and live differently in the two places. AHRC facilitates developing area-specific work and helps to train local partner organisations. AHRC also serves to amplify local concerns through online publicity and regular communication with stakeholders on the ground, in the government and internationally. AHRC also actively listens to and seeks out personal stories being produced on the ground and carefully documents violations according to themes and countries in order to build up a better understanding of the situation and be able to make concrete and constructive recommendations to victims, partner organisations and civil society, government officials and international agencies. Other areas in which AHRC can help are with the legal or technical analyses of laws and policies to expose the injustice or oppression that may be concealed by such.

Human rights defenders are not omnipotent. They face restrictions, threats, frustration and exhaustion as the rest of humanity does. What they can be, however, are pathfinders, forerunners with enough courage to initiate processes and ignite hearts and wills against the trampling of human lives and dignity.

ANALYSIS: BY BOB BRECHER

THE “TICKING BOMB” : A SPURIOUS ARGUMENT FOR TORTURE



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BY BOB BRECHER

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Q What's your definition of the word 'torture'?

The President: Of what?

Q The word 'torture.' What's your definition?

The President: That's defined in U.S. law, and we don't torture.

Q Can you give me your version of it, sir?

The President: Whatever the law says. (Bush 2007; and see Sands 2008.)

Introduction

Even the most cynical “realists” among the world's politicians rarely defend torture, at least in public, however much they order others to use it. More usually, they “redefine” it as requiring ‘a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body function’ (Bybee 2002, 120) and so claim to be authorizing only “enhanced” interrogation techniques.

The attempted justification of torture, however, is something the politicians usually leave to their lapdogs, the philosophers and lawyers who claim to find convincing arguments for it – at least in some circumstances. (For detailed analysis, see Brecher 2007; Rejali 2009.) But their arguments are at best erroneous and at worst intellectually corrupt. In promoting what is a spurious set of arguments that purport to justify torture in circumstances of extreme emergency, the advocates of interrogational torture in “ticking bomb” cases are lending

their intellectual weight to the acceptance, legitimation and normalization of torture quite generally. Whether intentionally or not, their arguments serve the politicians' – and the torturers' – purposes.

Here's something typical of the genre. In 'Torture in principle and in practice', McMahan insists that while he is opposed to torture, nevertheless it's morally justifiable in extremis. He opens his piece with the welcome incantation, '[T]hose of us who oppose torture...' (McMahan 2008, 91). But just a few lines later, he says he 'will argue that the moral justifiability of torture in principle is virtually irrelevant in practice...' (McMahan 2008, 91). So what exactly does it mean to be 'opposed to' torture, if you think it's also sometimes morally justifiable? But that's not all. How is it possible for a serious thinker, which McMahan certainly is, to make the substantive claim he does here, namely that although torture is (in his view) morally justifiable, the fact that it is justifiable 'is virtually irrelevant in practice'? McMahan thinks that the circumstances in which it really is morally justifiable will be very rare. But that's not the point. Even if such cases were extremely rare, they wouldn't remain rare, as the slightest acquaintance with the history of torture makes clear. Torture's being even rarely morally justifiable would be all too relevant, not least to the politicians who want it used.

In some cases perhaps, the judgement of the advocates of torture is clouded by an intellectually hysterical acceptance of the terms of the so-called war on terror. Even so, one might nonetheless have expected them to notice that the entire "War on Terror" is itself presented as a response to extreme emergency and at least to reflect on their argument in light of that fact. Perhaps, on the other hand, and unlike McMahan, some actually approve of torture as a weapon

beyond the interrogation chamber in a war on terror that can know no bounds, but are embarrassed to admit it. Perhaps they prefer to take intellectual shelter in what may seem to be a respectable argument about torture in extreme emergencies only. Those are all matters for the advocates of interrogational torture to answer.

"Imagine there's good reason to think that someone's planted a bomb somewhere in a city, but no one knows where -- except one person, who is already in custody, but who won't say where or when it's going to go off. The bomb is ticking. Should the person be tortured?"

My first task here (section 1) is to show, at least in outline, that the basis of their "extreme emergency" argument – the so-called ticking bomb case -- is ill-founded. I focus on the "ticking bomb" scenario because it offers my opponents' strongest argument (and if even the strongest argument for torture fails, then any use of torture is always wrong); and because it is this argument which has the greatest ideological power and the biggest purchase on public opinion. Having dismissed the fantasy of the "ticking bomb" story, I shall go on (section 2) to argue that, even if you remain unconvinced that the story is no more than fantasy, the consequentialist argument for using torture in extremis fails precisely on account of the likely social and political consequences of its use. In section 3 I shall briefly discuss a genuine case where torture was considered (but not used) as a means of gaining urgent information; and argue that even in that genuine case and even if torture might have been effective, its use remained unjustified. Finally, in section 4, I shall say a little about

what torture is and why it is the worst thing that human beings do to one another.

Of course, unless you are a consequentialist about right and wrong, the pro-torture argument doesn't even get off the ground. But that's not good enough: proponents of interrogational torture would argue that the ticking bomb scenario shows that you're wrong not to be a consequentialist about morality. So the argument needs to be answered in its own terms.

1. The "Ticking Bomb"

Imagine there's good reason to think that someone's planted a bomb somewhere in a city, but no one knows where -- except one person, who is already in custody, but who won't say where or when it's going to go off. The bomb is ticking. Should the person be tortured? People like Allhoff (2012), Dershowitz (2002), Posner (2004) and Walzer (2003) think they should: torture is the last and only way of possibly preventing hundreds, or thousands, of deaths and terrible injuries and so it has to be used.

This "ticking bomb" scenario, however, makes (at least) four central assumptions, none of which holds up. First, it's assumed that the police, security forces or interrogators know their captive has the information. But that's extraordinarily unlikely (though not impossible, as the Giefgen case shows -- see below). Dershowitz relies on anecdote: he claims, to cite just one example, that 'There is little doubt that some acts of terrorism -- which could have killed many civilians -- were prevented' in Israel (Dershowitz 2002, 140). So does Walzer (1973, 60); so do the other proponents of interrogational torture. But bombers are likely to be careful planners, and "the authorities" are unlikely to be sufficiently well informed to be certain that their suspect really does know about

the bomb. Second, how does anyone -- apart from the bomber -- know that time really is running out, so that there really is no time for more subtle interrogational techniques? That can be no more than a suspicion, at best. It can't be something "the authorities" know. The claim that torture is necessary, therefore, is false: all that can be claimed is that it may be necessary and that we cannot know in advance whether it is or not. And that makes a difference, inasmuch as it dispels the air of "necessity in extremis" about the scenario. Third, since the torture is only interrogational, not punitive, what would the captive be likely to do? Obviously they'd lie to buy time. Remember that once the bomb goes off, there is no longer any question of torture -- otherwise it would of course be punitive, not interrogational, torture.

Fourth, and crucially, the argument depends on the assumption that torture would in fact work. Again, and unsurprisingly, nearly all the evidence here is anecdotal: people have assured me that someone has assured them that torture has saved lives; others that there is no such evidence. Given that an adequate set of objective empirical studies has to remain unavailable, two points can be made. The US *Field Manual*, like others the world over, prohibits interrogational torture on grounds of its ineffectiveness (Casebeer 2003; Pachecco 1999, 30; Rose 2004, 95). Are not the military more likely to know what they are talking about than the lawyers and philosophers? Certainly Dershowitz, the most thorough of interrogational torture's defenders, is systematically confused about this. He offers as his central example a 1995 case where a plot to 'assassinate the pope and to crash eleven commercial airliners... into the Pacific' was probably prevented when '[F]or sixty-seven days, intelligence agents beat the suspect...' (Dershowitz 2002, 137; cf. Franklin 2009). So much for the "urgency" of the case! As for effectiveness in cases of real urgency

(see section 3) consider waterboarding, the method most often claimed to be effective. First, if it were so effective, then wouldn't the captive say just anything to stop it (and remember that the torture would stop while their story was checked out)? Ken Loach's film, *Route Irish*, makes the point brilliantly. The fact, furthermore, that the Americans waterboarded Khalid Sheikh Mohammed some 183 times and Abu Zubaydah 83 times (Shane 2009) obviously casts serious doubt on its interrogational effectiveness. One of the very few attempts actually to set out what empirical evidence there is, or is claimed to be, is Franklin's (Franklin 2009): but I confidently leave readers to judge for themselves the quality and credibility of its purported arguments.

The "ticking bomb" story remains a fantasy, the terms of which are in serious tension, if not in contradiction, with one another.

2. Consequences of Interrogational Torture

Suppose, though, that these considerations fail to persuade you. Then, since all arguments for interrogational torture claim that the consequences of not torturing are worse than the consequences of torturing, we need carefully to think about those consequences; and to think about them rather more carefully than the defenders of torture appear to manage.

First, and most obviously, interrogational torture needs professional torturers. In fact, it needs especially skilled professional torturers, just because time is claimed to be of the essence and the so-called suspect has to remain able actually to give the information needed. But once torture were normalized like this, and professional torturers were treated rather like professional bomb disposal people, we would be living in

a world where their services were likely to be ever more called upon, and in more and more different contexts: suspected murderers, drug-traffickers, rapists, perhaps even tax-evaders – as the (highly conservative) *Economist* (2003) long ago pointed out. In fact, the (especially) American use of torture in the past decade has already pushed us a long way down this road, as was all too predictable (eg Kreimer 2003, 291). Even before that, this escalation had already been experienced as a result of the quasi-legality of torture in Israel from 1987-1999. In these twelve years, the use of torture had rapidly spread beyond any interrogational setting. That's why the Israeli Supreme Court withdrew the "necessity" defence against the charge of torture in 1999 – however hypocritically (Allen 2005; Biletzki 2001; Parry & White 2002, 757-60).

The question of the need for professional torturers to carry out the highly specialized work of the extraordinarily urgent interrogational torture allegedly necessitated by a "ticking bomb" raises an important and much broader issue about how arguments for such torture – and also arguments about many other public policy issues – are presented. They all too often start, and Dershowitz himself is explicit about this, with the question, "What would you do if...?" (Dershowitz 2002, 133). For example, commenting on the British army's "interrogation techniques" in the north of Ireland – which were in 1971 eliciting at least some disquiet in the UK – the philosopher Anthony Quinton wrote:

I do not see on what basis anyone could argue that the prohibition of torture is an absolute moral principle. ... Consider a man caught planting a bomb in a large hospital, which no one dare touch for fear of setting it off. It was this kind of extreme situation I had in mind when I said earlier that I thought

torture could be justifiable. (Quinton 1971, 758)

"The capacity of the tortured person to act, that is to say, to think and then to do something, rather than just to behave in response to external "stimuli", is broken..."

He immediately points out two difficulties; but he doesn't register their impact on his argument. First, he rightly notes that 'any but the most sparing recourse to [torture] will nourish a guild of professional torturers, a persisting danger to society much greater, even if more long-drawn-out, than anything their employment is likely to prevent' (Quinton 1971, 758); and second, that 'If a society does not professionalise torture, then the limits of its efficiency make its application in any particular extreme situation that much more dubious' (Quinton 1971, 758). But these limits simply rule such an application out, just because the "ticking bomb" scenario requires precisely that efficiency which the amateur torturer couldn't bring to it. Or consider Michael Walzer, North American liberalism personified: 'I would do whatever was necessary to extract information in the ticking bomb case -- that is, I would make the same argument after 9/11 that I made 30 years before' (Walzer 2003). Unless Walzer has been trained to torture, this really is an extraordinarily stupid remark. The question that needs to be asked is this: "What would you require *someone else* -- a professional torturer -- to do *on your behalf*?" and furthermore, not as a supererogatory or altruistic act, but as the practice of their profession.

Nor is this only a matter of the professional skill required. Even if I could do it, what I would do, or think I would do,

in a particular situation is irrelevant to the question of what ought to be done. What you or I might do, for example, if someone attacked a friend on the street is one thing. What it would be right or wrong for you or me to do is another: they may or may not coincide. That is precisely why societies have legal structures rather than relying on vigilantism. The apparently innocent question, "What would you do if...?", is no basis for social and political policy. It is an invitation to think about what is morally right or wrong; it is not an invitation to base your judgement about that on guesses about your own likely response, or attempted response, in extremis.

To return to the central issue: is it not likely that torture's being a recognized western weapon would lead to more, not to fewer, terrorist acts and to more, rather than fewer, volunteers for "suicide bombing" (Richardson 2006)? Isn't this what has actually happened since 2001? The people who planted bombs on London trains and buses in 2005, for instance, cited as their motivation the UK's role in the occupation of Iraq, with its attendant atrocities. Sympathy for such acts would also probably increase, again as perhaps it has over the past decade: for after all, countries that torture can hardly claim the moral high ground (Rose 2004, 72). Why should an Assad, a Mubarak, a Sri Lankan, Chinese or Moroccan government -- or anyone else -- give up their weapon of mass terror -- torture -- if traditional powers, and in particular the USA, not only use it, but try to present it as morally justified?

And what about the training of the torturers? They need, after all, to have '[S]pecial classes ... where new torturers are shown what torture looks like, either in filmed demonstrations or even live demonstrations on actual prisoners' (Crelinsten 1995, 49) or on people -- sometimes children -- picked up

in the favelas (Haritos-Fatouros, 1995). (For details, see Wolfendale's detailed analysis of torture training (Wolfendale 2006).) Recognizing the profession of torturer as a profession means recognizing also their training, just as in the case of the professions of education, law and medicine (Gray 2003). But even that's not all. The expertise of doctors and psychologists is indispensable if torture is to be at its most effective, as the American Psychological Association knows to its cost: it took its members several years to force through a statement saying that assisting in torture was antithetical to its professional values and responsibilities (Welch 2008). You might think such a statement superfluous; but unhappily it isn't (Bloche and Marks 2005; Medact 2011).

Finally, among the various consequences of regarding interrogational torture as morally justifiable are two that are unavoidable because they don't depend on the contingencies of the real world. They are, if you like, logical consequences. First, it would be a moral duty incumbent on all able citizens to assist and/or to facilitate such assistance: for if interrogational torture is justified on account of the consequences, then anyone refusing their expert help in the service of the greatest happiness of the greatest number would be morally culpable. To have an expectation of public officials that they use torture if "necessary" is hypocritical unless you are prepared at least to assist, at most to undergo, the requisite training. Pacifists, for example, can't reasonably ask others to kill, or to be trained to kill, on their behalf.

"The consequences of permitting interrogational torture would be – and in many ways already are – morally and politically disastrous."

Second, if it really is the consequences of an action that determine its rightness or wrongness, then surely other people besides the "captured terrorist" can be tortured in order to avoid a catastrophe. Without apparently understanding the importance of the point, Dershowitz himself actually recognizes this problem for his argument. He says that '... torture sometimes works. Jordan apparently broke the most notorious terrorist of the 1980s, Abu Nidal, by threatening his mother' (Dershowitz 2002, 249, n.11). Quite so. However, his attempt to rescue his position from its own logical implications is ludicrous. Purporting to recognize the need to avoid arguing that 'anything goes as long as the number of people tortured or killed does not exceed the number that would be saved', he then suggests that we need 'other constraints on what we can properly do', which 'can come from rule utilitarianisms [sic] or other principles of morality, such as the prohibition against deliberately punishing the innocent' (Dershowitz 2002, 146). But if rule utilitarianism rules out torturing people such as a suspect's mother or children on the grounds that following the rule, "Torture anyone so long as it works", has overall negative consequences, then it rules out torturing the so-called suspect too. Why? Because, in consequentialist terms, effectiveness in achieving the "best possible" outcome is all that *can* matter. As for bringing in non-consequentialist principles: consequentialism – in which terms the whole argument is made – insists that there are none. That's what makes consequentialism *consequentialism*.

The consequences of permitting interrogational torture would be – and in many ways already are – morally and politically disastrous.

3. A Real Case

As I've already suggested, the "ticking bomb" fantasy, like any other, is no basis for public policy. So here's a real case in which the question of interrogational torture did in fact arise. In 2002, the police in Frankfurt, Germany, actually knew that it was Magnus Gäfgen who had kidnapped Jakob von Metzler, the 11-year old son of a banker, and was holding him as ransom. They had collected conclusive evidence from Gäfgen's apartment and had also watched him pick up the ransom money left by his father. But he refused to say where the boy was, only that he was locked up somewhere (and thus would slowly die unless he were found in time) (BBC News 2003). The police chief concerned 'ordered his men to threaten Gäfgen with violence to force a statement' (Schroeder 2006, 188). The threat was not carried out; it turned out that the boy was already dead; and the ramifications of the case continue (Evans 2011). Still, assuming that an adequately skilled torturer could have been found in time, should Gäfgen have been tortured to force him to tell the police where the boy was? No. Why not? Because (for consequentialists) the consequences, as I have outlined, would be even worse than the boy's death. It was too late: the catastrophe was no longer avoidable. That, after all, is what the real world is like.

And if someone objects that in the real world of political responsibility it's sometimes necessary to get one's hands dirty to avoid catastrophe, as Walzer famously has (Walzer 1973; 2003; and compare Posner, 2004, above) then they need to have the obvious pointed out to them: there is more than one way of getting your hands dirty. Not torturing Gäfgen – not torturing anyone, in any circumstances -- is one of those ways. So the notorious insistence of some lawyers and academics that '[N]o one who doubts' that

interrogational torture is justifiable 'should be in a position of public responsibility' (Posner 2004, 295) can be turned back against them.

4. What Torture Is and Why That Matters

Torture is the worst thing we do to each other. A torturous society – the sort of society increasingly legitimized since September 2001 – is the worst society we can create (Brecher 2011). Why?

Here is an account of torture -- not a definition, which is neither possible nor desirable (Brecher 2007, 3-6; Bush 2007) -- but a description:

The subject of judicial or interrogational torture is 'broken' when, and only when, he has become so distraught, so unable to bear any more suffering, that he can no longer resist any request the torturer might make. The tortured then 'pours out his guts'. (Davis, 2005, 165)

The capacity of the tortured person to act, that is to say, to think and then to do something, rather than just to behave in response to external "stimuli", is broken. And because what makes us persons, rather than some other sort of being, is precisely our capacity to act, to do things, it follows that the person being tortured has, in their own eyes, ceased to be a person. That after all is exactly what the torturer is trying to achieve. It's worth pausing here to emphasise that this is also why interrogational torture -- as contrasted with torture used to intimidate, terrorize, punish or dehumanize -- has to require extraordinary skill. The torturer has to get the person they are torturing to 'pour out [their] guts', but to do so in that precise moment just before the response to 'any request the torturer might make' becomes just that, an unthought response, rather than

an action. Otherwise they are no longer able to give the torturer what they want, namely a genuine answer to the question, "Where's the bomb?" But what could be a more complete negation of a person than to break them, to make simply an object of them? Dershowitz crassly assumes, as do many others, that '[P]ain is a lesser and more remediable harm than death' (Dershowitz 2002, 144). From that, he argues that, since 'nonlethal torture' is less bad than death, and since the death penalty is widely accepted, torture short of torturing to death must also be justified (Dershowitz, 2002, 148; 155; and cf. McMahan 2008, 91). But to end a person's life, terrible as it is, is not on a par with making them into something that is not a person, whether temporarily or permanently. Perhaps it's their commitment to a consequentialist view of morality, a view that assumes we can measure all harms on a single scale, and demands that we do so, that prevents these supporters of interrogational

torture from understanding this simple fact. Of course, it's also why you might object to consequentialism as an account of right and wrong: if it's a theory in terms of which torture might even *conceivably* be justified, then that shows that it must be a mistaken theory.

Let me finish by emphasising what torture actually is. I'll do so in the unsurpassable words of Jean Améry, an anti-Nazi resistance fighter who eventually committed suicide some 35 years after being tortured by the Gestapo:

Only in torture does the transformation of the person into flesh become complete. Frail in the face of violence, yelling out in pain, awaiting no help, capable of no resistance, the tortured person is only a body, and nothing else besides that. (Améry 1980, 6)

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COVER STORY: ARTICLE BY SHEIKH SHOWKAT HUSSAIN**TORTURE AGAINST CHILDREN IN KASHMIR**

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BY SHEIKH SHOWKAT HUSSAIN

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On March 29, 1976 Americo Pena and three other police officials kidnapped Joelito, a 17-year-old son of Paraguayan social worker Dr. Filartiga from his home. They took him to a police station where he was tortured for information concerning his father's activities. His father was suspected to be supporter of Organization Politico Militar (OPM) whose members, after infiltrating into the country from Argentina, were suspected to be involved in confrontation with Paraguayan forces.

Pena and the three other policemen beat and whipped the youth severely. They also resorted to the use of high voltage electric shocks administered to Joelito through his fingertips and through a wire inserted in his penis. The electric shocks were ultimately increased to such a frequency and intensity that Joelito died of cardiac arrest.

In order to cover unexpected death of Joelito,

Pena took body of the victim to his own house. He placed the body on the bed of his seventeen-year-old daughter. His daughter's husband was prepared to report the murder of Joelito, yet was made to confess to a crime he did not commit, and claim that the death was caused by him on provocation because the deceased had been seen in the bed of his wife. Pena and other police men associated with custodial killing reasoned that the son-in-law would escape severe sentence as the reason given (provocation) would constitute a valid defence for his act under criminal law. Failing to get redress from Paraguayan courts and receiving threats from Pena, Filartiga and his family fled and sought asylum in United States of America.

In July 1978, Pena also came to US as a tourist and was subsequently detained for overstaying. Dr Filartiga filed a suit under Alien Tort Statute, against Pena. Pena pleaded that the proper forum for such a hearing was the Paraguayan court, a plea

that was accepted. After failing to secure a stay against the deportation of Pena, Filartiga decided to challenge the decision of the lower court in the Second Circuit Court of Appeals. Argument in *Filartiga v Pena-Irala*¹ took place before Chief Justice Feinberg and Judges Kaufman and Kears on 30th June 1980. The Judges unanimously held that officially sanctioned torture is a violation of international law. They therefore found that Alien Tort Statute of US provided basis for exercise of federal jurisdiction in a wrongful death action brought by Paragauyaon against the Paragauyaon defendant. In arriving at this decision, the court relied on the ground that prohibition against torture had become part of customary international law. This is reflected in the Universal Declaration of Human Rights (UDHR). For the purpose of civil liability, the court ruled that the person involved in torture has become enemy of mankind, much as pirates and slave traders are common enemies of humanity. In accordance with the findings of Court of Appeal, the District Court proceeded with the case and decided it on 12 Jan 1984. It announced the judgment against Pena and awarded damages worth one million US dollars to Filartiga. This was in spite of the fact that US was not a party to *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984.

“International law has been sensitive to the problems of children ever since Hague Conventions were adopted towards the end of 19th century and in the beginning of twentieth century.”

I have narrated detailed account of this

1 *Filartiga v Pena-Irala* (1980) 630 F 2nd 896

case because facts of the case resemble the situation hundreds of thousands of children² in Jammu and Kashmir find themselves in. They face same type of detention, torture and custodial killing as were experienced by Joelito. Police and security agencies often subject children to detention in order to extract information about their kith and kin involved or perceived to be involved in militancy. Paragauyaon police tried to cover up the act by concocting a story and implicating an innocent man. Security agencies in Kashmir are, on the other hand, not in need of fabricated stories because they are protected against any and all legal action by Section 6 of the 1997 Disturbed Areas Act and the 1958 Armed Forces (Special Powers) Act. These legislations authorize personal belonging to police and other security agencies to kill a person or destroy his property on mere suspicion of their involvement in breach of public order. Law provides blanket immunity; this breeds impunity and irresponsible use of authority and firearms. The state furthermore seldom gives permission for prosecution. According to a report published in ‘Mail Today’, “about three hundred cases against the army and other armed forces persons have been waiting the home ministries go ahead.” The Central Government has not granted approval for the investigation of even a single case even with the rare encouragement of the police. The Armed Forces (Special Powers) Act makes it mandatory for state-level administration to seek permission from the centre to prosecute armed personnel found responsible for committing crimes during “counter insurgency operations”³.

2 Children Under UN Convention on Rights of the Child are those human beings who are below the age of 18 years (Article 1)

3 Mail Today, Justice in Kashmir at Delhi’s mercy, Nov 26, 2007

International law has been sensitive to the problems of children ever since Hague Conventions were adopted towards the end of 19th century and in the beginning of twentieth century. The protections guaranteed children during hostilities are now incorporated in Geneva Convention IV under Humanitarian Law. The Convention makes it obligatory for the parties to provide safety zones for children during hostilities⁴. The Convention also makes it compulsory for armed forces to provide maintenance for children⁵. Occupying powers are required to ensure the safety and protection of children⁶. Protocol I to the Geneva Convention expressly provides protection to children from any sort of assault during warfare. The Protocol even entitles children to special care in spite of their involvement in hostilities⁷. Yet India is not a party to these Protocols. So far as the Geneva Conventions are concerned, the Indian Supreme Court does not acknowledge such rights. This is despite the Geneva Conventions Act of 1960⁸.

“Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession.”

Special rules relating to administration of Juvenile Justice were formulated in “UN Conference Relating to Juvenile Justice” in

Beijing in 1985. Rule 17 (3) protects children from corporeal punishment. The Convention on Rights of Child (1989) provides protection to children from all forms of violence, injury, abuse, neglect or negligent treatment⁹. Article 37 of the same Convention states that party shall ensure that no child shall be subjected to torture or any other form of cruel, inhuman and degrading treatment or punishment. Besides these specific instruments relating to the protection of children, other human rights laws protect all human beings from cruel inhuman and degrading treatment. Convention against Torture and Other Forms of Cruel, Inhuman and Degrading treatment or Punishment clearly states that no exceptional circumstances whatsoever whether a state of war or threat of war internal political instability or any other public emergency may be invoked as justification for torture¹⁰. The Convention makes it clear that an order from a superior officer or a public authority may also not be invoked as a justification for torture¹¹. International Covenant on Civil and Political Rights declares that no one shall be subjected to torture, cruel inhuman or degrading treatment or punishment¹². Article 4 of the same convention makes Article 7 a non-derogable right even in case of public emergencies. The Geneva Convention, which applies also to local armed conflicts, also outlaws torture, rape and hostage-taking¹³.

Torture refers to any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession. Punishing a person for an act he or a third

4 Article 14

5 Article 24

6 Article 50

7 Article 71 Protocol I

8 Rev. Mons. Sebastiao Francisco Xavier dos Remedios Monteiro v The State of Goa. AIR 1970 SC 329

9 Article 19

10 Article 2 (2)

11 Article 2 (3)

12 Article 7

13 Common Article 3

person has committed or is suspected of having committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity also constitutes torture¹⁴.

The Indian Constitution does not have any specific provision which explicitly prohibits torture. The Supreme Court of India however, made it clear in its case law that protection against torture is inherent in right to life and personal liberty. In *DK Basu v State of West Bengal*¹⁵ Supreme Court made it clear that any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution: whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness. Every man would become law unto himself; such would lead to a state of anarchy. No civilized nation can permit this brutish existence to become the reality of the multitudes under their care. Does a citizen shed his fundamental right to life the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance upon his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No' ". In *Neelabati Bahera v State of Orissa*¹⁶, the Supreme Court emphasized that the fundamental rights of prisoners and detainees according to Article 21 must in no way be abrogated. The court relied upon

Article 9 (5) of The International Covenants on Civil and Political Rights 1966 and granted a compensation of rupees one lakhs fifty thousand to the mother of a boy who had perished from severe torture while in police custody. The judgment was delivered despite the Indian state's reservations to the provision of compensation under *The International Covenant on Civil and Political Rights* 1996. The 44Th amendment of the Indian Constitution has established that the presidential privilege to suspend the right to move the court for enforcement of fundamental rights during emergency cannot be exercised in respect to the fundamental rights secured by Article 20 and 21. It is clear that operation of Article 20 and 21 cannot and should not be suspended even in "emergencies" under Article 359. Protection against torture should instead be an integral part of the right to life and liberty (Article 21) is thus ensured even during "emergencies" such as war, external aggression or armed rebellion.

"Indian Constitution does not have any specific provision which explicitly provides protection against torture."

While these Supreme Court judgments may be beneficial for children of mainland India, they ring hollow for minors in Kashmir. Despite these laws, children in Kashmir continue to be used as human shields during combat operations, a practice continues unabated¹⁷. On January 22, 2008 a four-year-child Qasim Bin Asiq was used as a shield by troops during encounter with militants¹⁸. Children are also used in same callous

14 Article 1 of The Convention Against Torture And Other Cruel, Inhuman or degrading Treatment or Punishment (19884)

15 AIR 1997 SC 610

16 AIR 1993 (2) SC 1960

17 The report about one such incident can be seen in Greater Kashmir Jan 14, 2007

18 Rising Kashmir, Jan 23, 2008

manner during mine clearing activities. Children continue to be detained for indefinite periods simply because authorities anticipate that they are likely to get involved in insurgency. Teenagers are forced to report to camps of security agencies at regular intervals. Families of children suspected or proven to be involved in militancy are often harassed. If the minor in question absconds, family members become targets of security agencies and are publicly shamed. During search operations, it is mostly boys below the age of eighteen who have to face repeated identification parades. When they leave the conflict-ridden state and move into other states they are often looked upon with suspicion and subjected to humiliating treatment. Examples of such abusive treatment are witnessed through electronic media¹⁹. It is children mostly who become targets of faked “encounters” between their parents and the armed forces. If the parents of a child are killed at the hands of security agencies they are not entitled to any relief or rehabilitation packages. If other family members are detained, the minors are left to fend for themselves and must bear the costs of hiring lawyers to secure the release of their relatives. In this traumatic process, many are compelled to abandon their studies.

Rape is frequently used as a weapon in order to force an absconding militant to surrender. Teenaged girls are often used in scandalous operations to apprehend militants. Even high-ranking officials in security agencies are found to have molested teenaged girls. One such officer, a former Director Inspector General of BSF called such acts part and parcel of counterinsurgency operations to trap the militants²⁰. In 2009 a Grade 10 female student of Shopian accompanying her sister-

in-law while returning from her orchard was allegedly molested and killed by members of security agencies leading to huge agitation in Kashmir valley. Children growing up in the shadow of fear and restricted movement often manifest abnormal psychological behaviour. Children of dead, detained and missing family members also become vulnerable to sexual and economic exploitation. The minors are deprived of property and other avenues of development. Many others lose limbs to shell or mine fragments. On many occasions, children are specifically targeted²¹. During an uprising in 2010, 120 boys, mostly below the age of eighteen, were killed by various security agencies of the state. In the incident's aftermath, thousands mostly school going boys were rounded up under Public Safety Act and subjected to various forms of torture. Even during public and legally organised marriage ceremonies, children are shot dead. This is despite the fact that information relating to celebrations had already been conveyed to the paramilitary forces ‘regulating’ the area²². School-going children, especially girls, are physically harassed while on their way to school. One such incident occurred in Awanti-Pora and is still under investigation by the state's human rights commission. Yet people do not have faith in such investigations as the Commission according to its former *chairman Justice AQ Parray* is cowardly, ineffective and utterly unequipped to address mysterious disappearances and killings²³. Even so-called relief and rehabilitation packages created by Indian security apparatus have ironically proved lethal to the children of Kashmir. One such gesture of “goodwill” ended in the drowning of 22 school children and their

19 Ajj Tak telecast (A story relating to torture of a Kashmiri boy by army personnel)

20 Times of India 11 June ,2006

21 Kashmir Times July 26,2006

22 Kashmir observer, The Tribune, the Excelsior 26 july,2006

23 Kashmir Times 10 Dec,2006

teachers at the hands of security personnel²⁴. An enquiry commission established by the state has confirmed the negligence and mischief of the navy personnel in this incident.²⁵

Massive emigration has been the frightened and desperate response of many children in Kashmir. However, their lives do not necessarily improve with the geographical distance put between themselves and their conflict-ridden homes. They experience discrimination elsewhere and are denied the relief and rehabilitation packages given to the children of other communities. They are harassed and humiliated, and lack social and familial networks that can protect them from such violence and discrimination. Homeless and lost in cities and towns, the displaced children become vulnerable to further physical and psychological trauma. Many are unable to cope with the cultural shock experienced when trying to survive in a new environment, and resort to drugs and other criminal activity.

The inaction of the Indian authorities to the plight of these orphaned and/or displaced children is contrary to international law, where states pledge to protect and provide for those under its care, especially the most vulnerable - children. Courts in Kashmir are preoccupied with noble but further removed environmental goals rather than the future generation for which they seek to preserve the environment. Numerous NGOs pretend to work for the good of children but deliver precious little besides employment (here synonymous with exploitation) for the children. The inquiries commissioned by the government often fail to provide remedy to victims. Children continue to suffer, and it

appears the only way to rectify the situation is either to appoint a Special Rapporteur to monitor the plight of children in Kashmir (on behalf of UN Sub-Commission on Protection and Promotion of Human Rights or the newly created Human Rights Council) and make recommendations to and place diplomatic pressure on the government for future action.

The perception that the conflict in Kashmir is not an international armed conflict must not come in the way of appointment of such a tribunal. The tragedy in Rwanda that continues to assail the conscience of people around the globe is a precious lesson against such deliberate and unconscionable neglect. Increased publicity and public pressure may eventually pave way for the *appointment of war crimes tribunal* after the pattern of Bosnia and Rwanda to study the overall pattern of human rights abuse in Kashmir. This will be the first of many steps towards addressing the human rights violations and rehabilitating the shattered community in Kashmir.



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URGENT

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²⁴ Kashmir Times Jammu and Greater Kashmir 31st may,2006.

²⁵ Greater Kashmir 10 Sep,2006

INDONESIA: NARRATIVES



© Photo provided by the AHRC's local partner in Indonesia

INDONESIA: MILITARY IMPUNITY

In a statement issued by AHRC on the International Day in Support of Victims of Torture in 2011, it was pointed out that "Torture is frequently used by the Police and the Military to force confessions, intimidate or to obtain information in Indonesia." Furthermore, the statement observed that "Indonesia has thousands of victims, probably more. Many of them have not committed any crime and the majority of them is poor or from marginalised groups. Persons undergoing serious torture often suffer from post-traumatic stress disorder (PTSD) syndrome, are unable to sleep well or cultivate and maintain healthy relationships and are psychologically scarred. Decades of medical research have shown how tremendous and long-lasting the impact of torture are upon the victims and often also for the perpetrator."

In this issue we are publishing five narratives of the torture and ill-treatment of Indonesians that have been documented by the AHRC with help of local partners. In these cases, government agencies still employ torture in their interrogation and investigative techniques and processes. This undermines rule of law and unjustly oppresses individuals and communities. When torture becomes the norm for security personnel, fear is permanently and damagingly established among the people.

RIAU: Police shoot arrestee in the head while he allegedly tried to escape

"The police have offered no explanation as to why they used deadly force to stop the victim."

On 2 June, 2011 at 9.30 pm, Syafrudin, a citizen from the Rokan Hilir district, Riau province was shot by members of the Persiapan Rantau Kopar Sub-district Police (POLSEC) in Riau. While, Syafrudin met with his friends Reski, Ade, and Doon at a food stall near his house, police officer Zulpadli, also known as Ocu, and another officer, Samsuar arrived by motorcycle at the stall.

Officer Zulpadli then asked Syafrudin to go with him to another food stall, called Uniang, near Syafrudin's house. When they arrived at the food stall, Officer Zulpadli ordered drinks for them and chatted with Syafrudin for around one hour. While they were talking, Zulpadli's colleague Renaldo, also member of the Persiapan Rantau Kopar Sub-district police joined them and later took Syafrudin to his car. Renaldo explained to Syafrudin that he would take him to the Persiapan Rantau Kopar Sub-district Police office because of Syafrudin's alleged involvement in a drugs case. Zulpadli left his motorcycle at the Uniang food stall and joined the others in the police car.

At 11 pm, Syafrudin's brother, Asnawi came to the Persiapan Rantau Kopar Sub-district Police office to look for his brother but could not find him there.

On 3 June 2011, at 10 am, the sub-district police called Asnawi and asked him to come to their office to meet the head of the the Persiapan Rantau Kopar Sub-district Police, Mr Sahdin Damanik. At the police, Head of Office Sahdin told Asnawi that his brother had died of gun shots wounds while attempting to escape. Safrudin's family then went to the Duri regional general hospital (RSUD) to see his corpse, which according to a hospital officer, was delivered by an unidentified person on June 3, 2011 at 7.50 am using a green hardtop Toyota car.

The family then took the corpse to their house in Kepenghuluan Rantau Kopar, Rokan Hilir

district. While washing the corpse, the family found swellings on the body, bruises on the face, the forehead, and found that the chest was wounded and that there were two bullet wounds in the back of the head.

The police have offered no explanation as to why they used deadly force to stop the victim. Normal and recognised procedure is to aim for the legs of a fleeing victim. Also, the fact that there were two bullet wounds to the back of the head implies that deadly force was used intentionally.

PAPUA: Jayapura city district police and military arbitrarily torture and arrest Papuan civilians

"Biben was dragged to an empty house which had been ransacked by the joint team members. There was a hole at the house, with bullets and papers around it. Biben was threatened with death if he did not admit that these belonged to him."

According to information received from Persekutuan Gereja-Gereja Baptis Papua (The Fellowship of Baptist Churches of Papua), Koalisi Masyarakat Sipil Untuk Penegakan Hukum dan HAM di Papua (Civil Society Coalition to Uphold Law and Human Rights in Papua) and other activists, on 31 August 2011 at 5 am, around 115 members of a joint team of Jayapura city district police (POLRESTA) and Cenderawasih military area command raided Papuan villagers in Horas Skyline village, Abepura district, Jayapura, Papua. All of the team members had guns and long barreled rifles, and some of them were wearing a black mask. When they were at a distance of about 300 meters from the targeted houses, the team shot at the targets seven times.

Siki Kogoya, a villager who was in his yard



Panius Kogoya, Siki Kogoya and Panius Kogoya; Images source: *The Fellowship of Baptist Churches of Papua*

at the time, was shocked when he heard the gunshots, after which he saw the joint team members make their way to him. One of the members pointed his gun at Siki's mouth, while three others pointed their long barreled rifles at his neck. They then beat him with rifle butts and kicked his head, face, ribs and chest. Siki was ordered to lie face down on the ground, while the officers continued pointing their weapons at him and asked him questions regarding the location of Panius Kogoya, Etra Yanengga, and Arman Kogoya, and whether he knows Danny Kogoya. This was related to their involvement in a shooting accident in Nafri on 1 August 2011, and the killing of a taxi driver and burning of his taxi in Skyline on 6 July, 2011.

At the same time, other joint team members went to Biben Kogoya (the neighbourhood leader)'s small house (*this small house is separated from Biben Kogoya's main house and is usually used by the community for worship, discussion or meeting*) and raided it. The officers then brought 14 villagers (three of whom were sick), randomly picked up from the village, to Biben's yard, ordered them to lie down and forced them to see the sun rise without blinking. The officers humiliated, kicked, beat and pointed their guns at the victims. The officers asked the victims who among them were Danny Kogoya, Panius Kogoya, Ekimar Kogoya, Etra Yanengga and Gidi Wenda, and forced them to disclose the location of Panius Kogoya, Ekimar Kogoya, and Etra Yanengga, and whether they know Danny Kogoya.

Being the neighbourhood leader, Biben had learnt from the urban village head (LURAH, an administrative leader for the regency/city area), that members of the regional Papua police (POLDA) and Jayapura city district police would raid his house. He did not expect to be beaten however. The joint team members placed a photo of the killed soldier in Nafri into a photo album at Biben's house, then showed it to him and forced him to admit that he was the killer.

Subsequently, Biben was dragged to an empty house which had been ransacked by the joint team members. There was a hole at the house, with bullets and papers around it. Biben was threatened with death if he did not admit that these belonged to him. When Biben refused to admit this, the officers dragged him towards the hole and tried to push him in. Biben managed to avoid falling in, but the joint team members then dragged him to another room. There, at the left corner, the officers ordered Biben to dig a hole while pointing a gun at him. Biben felt they would kill and bury him, and he tried to escape. He was caught and brought to his yard, where the other victims were held.

At 6:30 pm Metius Kogoya, a Christian clergyman, heard of the news and at 9:30 pm arrived at the location where the victims were being held. There, he was asked by the joint team members to name all the victims. When he named Ekimar, the officers immediately beat and dragged Ekimar to an empty yard, where he was beaten repeatedly and forced to name another killer. Finally, Ekimar named Panius, as a result of which Panius was also dragged to the yard and beaten together with Ekimar. Metius sat with the other victims in solidarity. He observed the victims being humiliated and beaten for eight hours, i.e. until 1pm.

While the victims were being beaten and interrogated, other joint team members were raiding Biben Kogoya's house for documents

that could be used as evidence. They seized 'weapons' such as traditional arrows, a chopper, and a knife. In the backyard, one officer shot a hole through a frying pan, stating, "With this frying pan, you cooked and gave food to members of the Free Papua Movement (OPM)." The joint team members also raided other victims' houses.

Furthermore, the joint team also asked Novi Kogoya alias Pia (7 years) to disclose the location of the gun hidden by her parents. Even though Novi Kogoya answered that she did not know, they kept repeating the question.

At approximately 1 pm, the chief of regional police (KAPOLDA) of Papua and the chief of Jayapura city district police (KAPOLRESTA) came to Biben's yard and ordered the joint team members to stop their assault. The victims were brought to the Jayapura city district police headquarters and interrogated as witnesses of the Nafri and Skyline killings. In violation of articles 17 and 38 of the Indonesian criminal procedure law, the joint team officers did not show any arrest and seizure warrant when arresting the victims. The police officers also did not inform the victims of their rights and interrogated them without legal counsel in violation of articles 51 and 54.

The Jayapura police officers threatened to kill Ekimar and Panius if they did not confess to being the killers in the Nafri and Skyline incidents. As a result, the two victims made statements that they were the killers. Ekimar is a minor, and his rights were violated by being interrogated and detained in the same manner as an adult.

The police completed their interrogation of the victims at 11 pm, i.e. excluding Ekimar and Panius, who were considered as suspects of manslaughter, murder, and violence under articles 338, 340, and 170.1 of the criminal code. The victims were taken to

a prison truck and not given food until the following morning.

On the next day, September 1, at 11:40 am, a representative from the national human rights commission in Papua, the Baptist church of Papua and several human rights activists came to the Jayapura city district police headquarters to see the victims. After several complaints submitted to the police, and due to insufficient proof, the police released all the victims except Ekimar and Panius at around 3 pm. The 13 victims are presently suffering from trauma and cannot conduct their daily activities as usual.

On September 3, at 9 am, the Jayapura district police gave arrest and detention warrants to the families of Ekimar and Panius in violation of articles 17 and 21.1 of the Indonesian criminal procedure law.

TIMIKA: Police kill union protester in Timika & injure others at Freeport

"The police in turn fired several random shots at the protesters. While some reports claim that the police were merely using rubber bullets, the deadly wounds and the ammunition cartridges found at the scene indicate otherwise."

According to the Chemical Energy Mining Union-All Indonesia Workers Union (Serikat Pekerja Kimia Energi Pertambangan-Serikat Pekerja Seluruh Indonesia) in Timika, West Papua, since September 15, 2011, PT Freeport Indonesia (PTFI) employees were on strike demanding wage adjustments. PT Freeport Indonesia is running controversial mining activities in Indonesia's resource rich province of West Papua. The company in the past has paid military and police to run security operations for them. The majority of striking workers were indigenous Papuans.

Based on the wages of up to \$ USD 15 per hour provided to workers by the Freeport-McMoRan Copper & Gold group in other countries, the West Papuan workers demanded their \$ USD 1.5/hr. wage to be increased to USD 3/hr. The employees sought negotiations with the management of the company, but were not given opportunities for a serious dialogue; instead, they faced direct intimidation from the management or through the police.

According to article 144 of Indonesia's law No 13/2003 concerning Manpower, protesting workers are protected from any termination of their employment:

Article 144

In the event of a strike performed in observance of what is stipulated under Article 140, the entrepreneur is prohibited from:

Replacing striking workers/ labourers with other workers/ labourers from outside of the enterprise; or

Imposing sanctions on or taking retaliatory actions in whatever form against striking workers/labourers and union officials during and after the strike is performed

In violation of this law, however, PTFI fired the striking workers and employed new personnel as their replacement.

On October 10, the employees returned to their work location to protest against their termination and demanded their jobs back. At 9:30 am, protesting employees from seven indigenous tribes that customarily hold the land of the Tembagapura mining location, and around 1000 employees from other areas walked to the entrance gate of the Gorong-gorong company bus transportation terminal (from where the PTFI run a bus to take the workers back to their dormitories). The police from Timika District Police (POLRES) had placed guards in front of the terminal, and refused to let the protesters

enter, despite negotiation attempts by Mr. Anis Natkime (chief of the seven involved indigenous tribes).

The police then fired warning shots at the protesters causing those in the front rows to leave. When the protesters in subsequent rows tried to make their way forward to the gate, the police started shooting into the crowd, resulting in panic. Peter W. Ayamiseba, Freeport employee in the catering division, was shot in the shoulder and died at the scene. At least nine more persons were injured. The then enraged crowd responded by throwing stones at the police.

The police in turn fired several random shots at the protesters. While some reports claim that the police were merely using rubber bullets, the deadly wounds and the ammunition cartridges found at the scene indicate otherwise. Despite the police's use of tear gas, the situation escalated further, resulting in the police withdrawing inside the gate they were trying to defend.

Mr. Ayamiseba's corpse was then brought directly to the Timika Regional General Hospital (RSUD), where the cause of his death was confirmed to have resulted from metal bullets. Nine other injured protesters (male) were also brought to the same hospital: Leo Wandagau and Melkias Rumbiak were wounded in the back by rubber bullets; Alius Komba was hit with a rifle in his stomach; Philiton Kogoya was hit by a rifle in his head; Ahmad Mustofa was wounded in the head and back by rubber bullets; Yunus Ngur W was shot in the stomach by police and operated upon in the hospital; Yusuf Kurni was wounded in his left hand by rubber bullets; Emeleanus Beanal was wounded in his right hand and left leg by rubber bullets and had bruises in his stomach caused by hits with a shotgun; and Chary Suripto was wounded in his left hand by the explosion of a tear gas unit.

The hospital did not provide the victims with any medical records, and their requests for obtaining such reports were denied without providing any reason. This is in violation of regulation no. 269/2008 from the Indonesian Ministry of Health, which states that information about the patient's identity, diagnosis, and medical history can be provided at the request and consent of the patient (article 10.2b) and that the content of the medical records belongs to the patient and can be provided to persons authorized by the patient or the patient's family (article 12.1).

A tenth and so far unidentified person (non-indigenous Papuan) among the protesters was also injured. Since he carried no identity documents and was not known to any of the other workers, he is suspected to have conducted intelligence activities for the police or the company during the protests, and to have been injured by accident.

On September 10, the workers laid Mr. Ayamiseba's corpse at the entrance gate of the Timika office of the Papuan Regional Autonomy Parliament (Dewan Perwakilan Rakyat Daerah - DPRD) expecting Mr. James R. Moffett, chairman of PT Freeport Indonesia to come and take up his responsibility in the case and to ensure that both company management and police are held accountable. Until September 12, Mr. Moffett had not appeared, and the body of victim was then taken to the Timika Regional General Hospital (RSUD) for an autopsy.

CENTRAL JAVA: No transparency in military proceedings against officers responsible for violence against Kebumen villagers

On 16 April 2011, members of the Indonesian national military (TNI) opened fire against protesters without any warning in Kebumen regency, Central Java. Military personnel also beat, kicked and shot the protesters,

allegedly with rubber bullets, causing several injuries. Ten villagers were arrested after they protested against the occupation of their land by the military (who is using the land as a training camp), and sweeping operations continued in the evening and the following day. Further operations by more than 100 TNI members are being conducted presently, putting more villagers at risk of arbitrary arrest and violence.

A few days after the incident, the IV/2-2 Purworejo sub-detachment military police (sub denpom IV/2-2 Purworejo) was examining relevant evidence and witnesses to construct the facts of the case. Nevertheless, until now there is no information regarding the progress and result of the examination into the military action. The Kebumen villagers sent at least three letters to the IV/ 2-2 Purworejo sub-detachment military police to ensure an effective investigation into the violence, but received no response.

Meanwhile, the trial against the villagers took place much faster. The trial began on July 3 in Kebumen district court, against six villagers: Solekhan, Mulyono, Adi Wiluyo, Sobirin, Asmarun alias Lubar bin Jaswadi and Sutriono alias Godreg bin Lamija. Asmarun and Sutriono were charged with maltreatment and violence against individuals under articles 170.1 jo. (in conjunction with) 351.1 jo. (in conjunction with) 55.1 of the criminal code, for allegedly maltreating a food carrier at the army research and development service (dislitbangad)'s office. The four others were charged with violence against property under articles 170.1 and 406.1 jo. (in conjunction with) 55.1 for allegedly destroying the military's entrance gate.

On September 8, the Kebumen court sentenced Asmarun and Sutriono to five months imprisonment, and the other four to six months. When this was appealed by the prosecutor at the Central Java high court,

the villagers' sentences were overall upheld; on October 6, the high court sentenced Asmarum and Sutiriono to five months and 19 days imprisonment. They were released on the same day for having served their sentence. On October 12, the four other victims were also released for having served their sentence after the high court sentenced them to five months and 28 days.

Until now, the only information and/or response from the military regarding its investigation into its soldiers' violent actions has been a statement by the commander of the IV/2-2 Purworejo sub-detachment, Captain Cpm Hadi Wahyudi, whereby he said he doesn't have the authority to explain the legal process the TNI members accused of shooting, maltreatment, and destruction of villagers' motorcycles will be subjected to. He stated that it is the 4th Diponegoro commander of military area command military police (danpondam IV/Diponegoro) who has this authority. However, no formal statement has been made by him either. Considering the slow and opaque nature of the legal process against the TNI members responsible for the April 16-17 incident, the AHRC is concerned that justice and due process will once again fall foul of military impunity.

WEST JAVA: A protester demanding her labour rights suffers a miscarriage due to police violence

PT Micro Garment, a company located in Solokan Jeruk, Bandung, West Java has frequently faced allegations of labour rights violations since its founding in 2004. Reported violations include payments below the minimum wage, as well as the violation of working hours, social security responsibilities, allowances, and compensation as stipulated in Indonesian labour law, and the freedom of association. PT Micro Garment is represented by Liz Chen, the director.

The protest on 6 May, 2011, by 149 employees was merely the latest of several protests and negotiations attempted by the factory employees to secure their rights. The strike and protest of that day was in accordance with law no. 13 of 2003 concerning manpower. Despite the legal and peaceful nature of the protest, the chief of Solokan Jeruk sector police, Umar Said, grabbed the megaphone from Tri Rubiati Sanik, the Executive Chairman of Joint Center Solidarity of Workers Struggle (Pusat Gabungan Solidariats Perjuangan Buruh- GSPB-, the labour union), and threatened to arrest Sanik. In response, some of the protesting employees attempted to prevent such an act. Mr. Said then elbowed Iis Suparti, while one community guidance police (bimaspol) officer called Ayi, pushed her, causing her to fall. Mrs. Suparti, who was pregnant, was taken to the nearest hospital, where she suffered a miscarriage. The violence against Mrs. Suparti can be seen on this video.

The protests by factory employees began after early August 2010, when PT Micro Garment and its employees took part in three bipartite discussions regarding complaints from its workers. Finally, on 12 August 2010, the management promised to pay full wages and overtime fees in accordance with labour laws, which has yet to occur.

In December 2010, the employees' representative submitted the case to the Bandung manpower agency for mediation. The result of the mediation was the agreement that the company would pay wages in accordance with minimum wage regulations starting from 23 December, 2010, and would pay the required public insurances starting from January, 2011. However, the company refrained from doing this, and instead began terminating employment of many workers.

On December 27, the management of PT. Micro Garment called the police to guard the factory area. Uniformed police officers

guarded the front of the factory, while plain-clothed officers guarded the inside. According to the police, they were guarding the factory due to a robbery complaint made by the management.

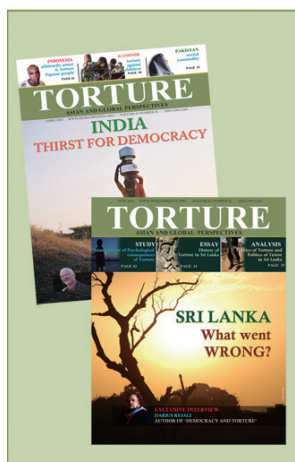
On the same day, Nanang Ibrahim, the head of the labour union and a factory employee, was charged with forgery, for using eight copies of testimonial letters of the neighbourhood head (Ketua RT) to prove he was sick, as permission to be absent from work while he was working at the factory. According to Mr. Ibrahim, the letter given by the neighborhood head was blank, and such use of a blank letter is common conduct at the factory. There has been no recent further examination of this case, but the possibility of criminal action against Mr. Ibrahim remains.

On 4th February, 2011, the factory sued Mr. Ibrahim at the Bandung Industrial Court, demanding compensation amounting to Rp 371,700,000 (around 39,626 USD) in material damages and Rp 15,000,000,000 (around 1,599,147 USD) in immaterial damages, and that Nanang be sacked without severance pay. Based on the verdict of the court in August 2011, Mr Ibrahim was terminated, yet PT. Micro Garment was ordered to pay his severance pay in accordance with the manpower law. In response, PT. Micro Garment appealed to the Supreme Court.

Moreover, the head of the village, Jajang, offered some money to the employees and requested them to resign from the company. Since the employees did not

see any good faith from the management of the company to fulfil their rights, they decided to strike on 6 May, 2011. According to Mr. Ibrahim, all strikes and protests conducted by the employees have fulfilled all legal requirements. However, on July 2011, the factory sued 177 employees at the Bandung industrial court for taking part in illegal strikes on 16-17 December 2010, 8 March 2011, and 6 May 2011, and demanded their termination without severance pay.

Since May 23, the Micro Garment's employees have conducted further peaceful protests asking the government to ensure redress against the violence towards Mrs. Suparti, as well as to ensure their labour rights. Until now, however, there is no response.



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PAKISTAN: NARRATIVES

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PAKISTAN: TORTURE IS THE NORM

Where torture is routine, little space exists to combat the practice. Torture is common in Pakistan, where thousands of torture victims continue to suffer without hope of justice being served or of receiving proper medical and psychological treatment. The statement issued by the AHRC on the Occasion of the International Day in Support of Victims of Torture, June 26, 2011, asserts that “the absence of proper complaint centres and no particular law to criminalise torture makes the menace of torture wide spread. The torture cases have to be reported to the police, where, being the main perpetrators of torture, the police simply refuse to register the cases. This is the main reason why official data about the cases of torture is not available.”

Torture has been termed, “a ‘crime of obedience’: an act performed in response to orders from authority that is considered illegal or immoral by the larger community”, by Prof. Herbart C. Kelman, in his essay entitled, ‘The Social Context of Torture: Policy Process and Authority Structure’. He further states, “The role of authorization is strengthened by the fact that torturers, typically, are not just acting within a hierarchy in which they are expected to obey – and have indeed been trained to obey without question.” Pakistan is a country where torture is common at every level of society. Narratives across Pakistan, published here, reveal how state agencies torture innocent individuals to cover-up the other crimes committed by the state.

PUNJAB: Impunity for police officials who torture a poet to death in custody

“The high police officials quickly sent the body for autopsy to control the violent mob. The post mortem report found 29 injury marks on his body and that his fingernails had been torn out.”

Five police officials allegedly responsible for torturing to death a poet in their custody are still at large. They have not been arrested and the investigation to book them is still ongoing after one month. It is reported that because of the influence of a provincial minister and other legislators from the ruling party the two police stations of the Chiniot district of Punjab province have become notorious for the use of torture. The police receive impunity through the good offices of provincial law minister and his family members.

Examination of the victim's corpse revealed 29 torture marks on his body and that his fingernails had been torn out. These injuries were inflicted upon the victim within a period of only 24 hours while he was in the custody of the police.

Mr. Mohummad Anwar Sahar son of Mehmood, a resident of Chiniot district, Punjab province, a popular poet, was asked on September 6, to record his statement in the case of one Zahid Arain who was murdered by unknown persons on August 14. He reported to the police at Langrana Police Station in the presence of some notables of the area. The Police Station House Officer (SHO) sub-inspector Zaffar Witto and investigation officer (IO) of the murder case, Assistant Sub Inspector (ASI) Jafar Wittoof told the notables that they will question him for the investigation of the murder case

and he will be freed after some time so they should return to their work. However, on the night of the 7 September the poet was shifted in precarious condition to another station, the Bhawana police station, and in the morning of 8 September people came to know that Sahar had died of brutal torture inflicted on him during investigation.

The people held demonstrations and rallies and all the commercial establishments in the area were closed in protest against the police torture and his death in custody. The high police officials quickly sent the body for autopsy to control the violent mob. The post mortem report found 29 injury marks on his body and found that his fingernails had been torn out. The district police officer (DPO) Rana Shahzad Iqbal immediately ordered an inquiry and suspended the SHO Zaffar Witto, IO Jafar Witto and three other police officials.

However, after almost one month no inquiry has been initiated nor has any police officer been arrested. It is reported that because of the alleged support of a provincial minister and other legislators from Chiniot and Faisalabad districts from the ruling party of the province to police officers of the Langrana and Bhawana police stations it is not possible to arrest the perpetrators.

Due to the absence of the legislation against torture and ill treatment in custody, law enforcement agencies enjoy impunity through the law.

LAHORE: A 12 year-old Christian girl is gang raped for eight months, forcibly converted, and then 'married' to one of her Muslim attackers

A 12-year-old Christian girl was abducted and raped for eight months. The rapists have not been arrested because of their affiliation

with a militant Muslim organization. Miss Anna (name withheld), is a 12-year-old Christian girl and the daughter of Arif Masih. Arif is employed as a street sweeper (scavenger) at WAPDA. He is a resident of quarter number 44, WAPDA colony, Shahdra, Lahore, the capital of Punjab province. Anna was kidnapped by two Muslim men on December 24, 2010, one day before Christmas. According to the report sent by the Pakistan Minority Movement, on that day in the morning her friend, Miss Nida, who lives in her neighbourhood, came to her house and asked Anna to go shopping. According to the plan of the perpetrators, her friend took her to a street where they waited in a car. Miss Nida introduced the perpetrator to her as her uncle.

“The irony of the matter is that the police never thought to ask the rapists and their religious groups as to how a girl of 12 could be married when according to the law marriage under the age of 16 is illegal.”

Anna was then taken a long distance and dropped at a house where she was raped. After two days some women, relatives of the rapists, namely Mumtaz Bibi, Farzana Bibi, and Kiran Bibi, along with her friend Nida came with some papers and told her to sign them otherwise she would not be released. Eventually she did sign with hesitation but was not released. The papers were about her marriage to one of the perpetrators, Muhammad Irfan. She was taken to several places and was forced to convert to Islam. When she refused, she was manhandled and beaten.

After her abduction, her father filed an FIR against unknown people on 5/1/2011. F I R NO 18/11. Sr. No 2138 to the Factory area

police station district Shaikhupura, Lahore. However, the police took no action for eight months.

In the first week of September 2011, more than eight months after her disappearance, Anna called her family from Tandianwalla, district Faisalabad, 190 kilometers from Lahore, and told them that she had been abducted but had escaped and was hiding at a bus stop. The parents went there and recovered her. She was brought back to her home and the parents produced her before the First Class Magistrate, factory area, Shadra, Miss Aasma Tehseen, who recorded her statement under section 164 of Cr Pc but did not order any action for her protection or medical checkup.

The rapists then immediately contacted the police through their religious group and produced a marriage certificate showing that one of them, Muhammad Irfan, was married to her. When Anna's parents went to the factory area police station to change the FIR to include the names of the rapists in the case the police flatly refuse to allow this and said that as she had married and converted to Islam it would be better to hand over the girl to her legal husband. If they refused they were told that a criminal case would be filed against them.

The Christian family is in hiding from the rapists and the police and according to the Christian community, the religious extremists, who are from a banned organization, the Lashkar-e-Tayyaba, are searching them. The abductors are claiming that she is pregnant but her mother denies that this is true. And in fact, make no difference whatsoever to the girl's plight.

The irony of the matter is that the police never thought to ask the rapists and their religious groups as to how a girl of 12 could be married when according to the law marriage under

the age of 16 is illegal. This is yet another example of how the Punjab provincial government is allegedly patronizing banned militant organizations.

SINDH: Sindh University authorities use law enforcement agencies for disappearances of students

Mr. Azal Ali Panhwar son of Munawar Ali Panhwar, student of M.sc. Biochemistry, Sindh University, Jamshoro, resident of Allama I. I. Qazi hostel block, filed a constitutional petition, number 863 of 2011 on May 11, 2011, seeking the provision of all student facilities according to the catalogue and student's activities calendar 2011 (STAGS) and the expulsion of police personnel from the student hostels of the university. He mentioned in his petition that since 2008 the internet services, the university buses to the students, the study tours and the sports facilities had not been provided as were promised in the student's activities calendar and for which students have paid their fees. Besides this he states that the students are deprived of hostel facilities as police force has been provided residence in the hostels. The students have to reside in rented houses and this is an extra financial burden on top of the university fees. Furthermore, there are no doctors in the dispensaries. He also submitted the signatures of 28 students who have written a memorandum to the vice chancellor of the university asking for the provision of all basic facilities to the students.

As his petition was being heard in the Sindh high court, police and plain clothed persons arrested Panhwar on June 26, just one month after his petition was filed. He was picked up at 6 pm from Hyder Chowk, near Rabia plaza, a crowded market place, when he was returning from the university. To arrest him,

the police used half a dozen vehicles, and the police party was headed by Mr. Fareed Jan Sarhandi, the District Police Officer (DPO) of the Hyderabad district, Sindh province. The plain clothed persons pushed him into one of the vehicles which did not have a registration number. The victim's brother and other family members contacted the DPO who assured them that the intelligence agencies took him for some investigation and that he would be released soon. Now, however, the DPO denies any knowledge of Mr. Panhwar's whereabouts.

Mr. Azal Ali Panhwar is a student leader of the University and belongs to the Jeay Sindh Muttehdha Mahaz, a nationalist organisation working for the greater autonomy of Sindh, especially in terms of its natural resources, as these are presently under the control of the federal government and the military of Pakistan.

It is alleged that three more students have been disappeared but their family members do not want to report them. They believe that if the news of their disappearance is leaked their children will be killed in the same fashion as is happening in Balochistan. Balochistan is where people are arrested and disappeared and their dead bodies are later found on the road side.

Another nationalist leader, Mr. Sana Ullah Bhatti, resident of house number 1234/74 Civil Hospital road, Tando Muhammad Khan, Sindh, was arrested by the police and the plain clothed persons lead by the same DPO on July 2, when Bhatti and his friend Yaqoob Mallah were coming from Tando Muhammad Khan. As they reached Giddu Chowk, Hyderabad, Sindh province, the DPO stopped them and Bhatti was pushed into a vehicle which, as in the previous incident, did not bear a registration plate. Since then, his whereabouts are unknown.

The DPO has since denied that he has arrested him. However, Yaqoob Mallah states that he witnessed Bhatti's arrest and that the DPO was definitely involved.

Mr. Faraz Ali Bhatti, Sana Ullah Bhatti's nephew has filed a case of habeas corpus for his release in the Sindh high court.

KARAK: A case of male lust and girl's treatment as sexual commodity; teenager gang-raped for one year by army and police officials

"The victim told the provincial high court that she was pregnant. A lady doctor Zakia conducted the medical examination of the girl and declared that she was six months pregnant."

A 16 year old girl, Miss Uzma Ayub, the daughter of Mohammad Ayub, a daily wage earner, resident of Marwataan Banda, Tehsil Tkht-e-Nasrati of Karak district, Khyber Pakhtoon Kha province, was abducted from her house in early October, 2010, when police along with an army man raided her house in the search of her brother who was wanted by the police in a theft case.

After her escape from the captivity (on September 19, 2011), Uzma stated before the media that she was dragged by the hair into a waiting car, handed over her family's enemies, who took her away to an unknown place and locked her in a room. At night several men came into the room, including Dr. Iqbal who gave her an injection and she fell unconscious. She thinks she was shifted two times and every time before the shifting, Dr. Iqbal would give her an injection to

make her unconscious. She was sexually assaulted by several men, including Naseeb Ullah, an army officer, Sardar Ali, Shakeel, Guley, Karim, Qamar Ali, Hakim Khan, a police officer, and Alam Ustad during her incarceration. "These people kept me at their house, where Mst Guleena and Shakeel came and spent some time with me. Then Dr. Iqbal came into the room. He administered me an injection and I fell unconscious. When I regained my senses, I noticed that I had been shifted to another location. I did not know anybody there. After some time, Qamar Ali alias Guley and Karim visited me."

In the statement she alleged: "In that house Naseebullah, a brother of Guley, visited me and forced me to marry him. Same night Naseeb Ullah's son visited me and raped me. Qamar Ali Khan, Karim and Alam also raped me. Two police officials, one named Hakim, used to frequently visit me to satisfy their lust. I don't know the name of the other cop but can recognise him if he is produced before me."

The wronged girl said: "All the people mentioned are involved in my abduction and molestation. I charged these persons with ruining my life and making me pregnant. In the house when I was drugged and raped second time, the people over there told me that I had been sold to them and they were taking me to Dera Ismail Khan and when they stopped at Bannu, I escaped from their captivity." This proved Uzma's salvation as she got out and ran into a nearby shop. She managed to get to a Public Call Office and telephoned her eldest brother, Alam Zeb who advised her to reach the Bannu bypass. Uzma had Rs. 300/- tied in her 'Narha', a common practice in the rural areas and she was thus able to telephone her brother and take a taxi to reach her brother. Alam Zeb was able to find her.

He took her straight to the Tehsil Court, Takte Nasrati. The enemies tried to obstruct their entry by appearing in a number of vehicles but Uzma managed to make her statement before their arrival. The Judge telephoned the Crimes Investigation Branch and Uzma and her family went to Peshawar to have her statement recorded. In her statement, Uzma has accused police personnel SHO Mohsin Ali, ASI Hakeem Khan, Amir Ali and Naseeb Ullah, the army officer, of sexually abusing her. In all, she named 13 persons as those involved in her abduction and rape.

The victim told the provincial high court that she was pregnant. A lady doctor Zakia conducted the medical examination of the girl and declared that she was six months pregnant.

It must also be acknowledged that in the cases of rape and abduction of women, the attitudes of the courts is usually not sympathetic. Before her escape on September 19, 2011, the case of her abduction, on the complaint of her mother was under process, but the courts were unable to recover her. In the month of April, 2011, the Chief Justice of Peshawar High Court took the case and converted it into a writ petition, but it has not provided justice to the victim in her recovery.

The victim's family has to face the dates of the hearing and observe the court's impotency before the police and administration. It can be observed by the proceedings of the court that the matter was closed without any conclusion. The alleged perpetrators were arrested, but were immediately released by the court on the grounds that girl was not recovered.

On April 5, 2011, a two-member bench comprising Justice Dost Muhammad Khan and Justice Yahya Afridi had directed the district police officer to trace the kidnapped

girl when the girl's mother had alleged that her daughter, then a student of 9th grade, had been kidnapped by police officials including SHO Pir Mohsin Shah, Sub-Inspector Hakeem Khan and Amir Muhammad during an illegal raid on her house. She had sent an application to Chief Justice of the PHC Ejaz Afzal Khan who had later converted it into a writ petition. The Karak DPO, Sajid Khan Mohmand, appeared before the court and contended that on the complaint of the female, the police had registered an FIR at the Takht-e-Nasrati Police Station in Karak. Police had raided several places, but could not recover the girl. He had added that four persons earlier charged by the complainant had been granted bail by a local court. A brother of the alleged kidnapped girl, Alamzeb Khan, had told the court that the family had learnt that his sister had been taken to Quetta by an army man, Naseeb Ullah Khan. He stated that although the family had named him, the local police did not arrest him. He had stated that the local police had also implicated him in different cases. The DPO stated that the complainant had not charged the said person in the initial statement. The PHC chief justice on April 6th directed the Karak DPO to contact the station commander of the Pakistan Army in Quetta to search for the teenage girl who, according to her family members, was being illegally held by a serving soldier after her alleged abduction by the local policemen. Alamzeb Khan, the brother of the kidnapped girl, informed the court that his family had received information from reliable sources that his sister was in illegal detention of the main accused Naseeb Ullah, who was an army man and currently serving in Quetta. The bench had directed the Karak DPO to record a supplementary statement of the girl's brother against Naseeb Ullah in the case. The bench also directed him to send a senior police officer to Quetta to discuss the girl's abduction with the station commander,

seek her recovery and pursue abduction charges against the soldier. He later fixed April 21st for the next hearing into the case. The April 21 hearing was fixed by the court but no further proceedings in regard to her recovery or arrest of army officer were seen.

The Provincial Commission on the Status of Women, Khyber Pakhtunkha, issued a fact finding report which was complied with by a team of different rights organizations including, Child Welfare and Protection Commission, Shirkat Gah, Blue Veins, Khwendo Kor, CRSD, and SPARC. The report states that the story has many threads to it and, like a fiction story, is a case of family quarrels, exploitation of the poor and weak by the better-off among the relatives, male lust, the collusion of the forces of law and order with the stronger elements of society. The forces of law and order have not only

turned a blind eye to the tragedy of a family and the ruination of an innocent life, but have been openly and actively complicit in it. The girl was a victim of the most heinous form of abuse and violence, and her family has suffered untold pain and suffering.

The government of Khyber Pakhtunkha has formed a high level committee under the provincial home secretary, after the revelation of victim's statement and the media's vast coverage, to probe into the case. The committee has recommended for the arrest of the police officials and the conducting of DNA test of the victim and the accused persons.

(The information was received from SPARK, UN Women-KP/FATA, CRSD and Provincial Commission on the Status of Women Khyber Pakhtunkhwa province and Daily TheNews.)



TORTURE

A police officer who tortures a person is a
COWARD

Administration that depends on torture openly
declares its
COWARDICE

Speak up against torture
NOW



ESSAY: 'Of Torture' by CESARE BECCARIA

With the introduction of Common Law, European nations began marking a turn towards democracy and freedom for ordinary people. This change was not happenstance. It was an achievement of cumulative victories waged directly by ordinary citizens against their respective regimes. One noteworthy moment is the publishing of the foundational treatise of Cesare Beccaria titled 'Of Crimes and Punishments' (1764). It marked a turn towards enlightened thinking when it came to punishing guilty. It advocated against the death penalty and sought comprehensive reform in criminal law. Beccaria was an Italian jurist, philosopher, and politician, and his writings still herald aspirations modern civilizations have failed to meet. In the following essay, Beccaria considers the theoretical aspects of Torture, its practice, and why torture is illegal, given that 'laws are the conditions under which men, naturally independent, united themselves in society.' This essay has been reproduced under common license as we believe it will help readers grasp the underlying principle which makes Torture illegal.



Cesare Beccaria, created by Pompeo Marchesi, & presently placed at the Palace of Brera at Milan. Picture by Giovanni Dall'Orto, January 19 2007.

OF TORTURE

“A very strange but necessary consequence of the use of torture is, that the case of the innocent is worse than that of the guilty” - Cesare Beccaria

The torture of a criminal during the course of his trial is a cruelty consecrated by custom in most nations. It is used with an intent either to make him confess his crime, or to explain some contradictions into which he had been led during his examination, or discover his accomplices, or for some kind of metaphysical and incomprehensible purgation of infamy, or, finally, in order to discover other crimes of which he is not accused, but of which he may be guilty.

No man can be judged a criminal until he be found guilty; nor can society take from him the public protection until it have been proved that he has violated the conditions on which it was granted. What right, then, but that of power, can authorise the punishment of a citizen so long as there remains any doubt of his guilt? This dilemma is frequent. Either he is guilty, or not guilty. If guilty, he should only suffer the punishment ordained by the laws, and torture becomes useless, as his confession is unnecessary, if he be not guilty, you torture the innocent; for, in the eye of the law, every man is innocent whose crime has not been proved. Besides, it is confounding all relations to expect that a man should be both the accuser and accused; and that pain should be the test of truth, as if truth resided in the muscles and fibres of a wretch in torture. By this method the robust will escape, and the feeble be condemned. These are the inconveniences of this pretended test of truth, worthy only of a cannibal, and which the Romans, in many respects barbarous, and whose savage virtue has been too much admired, reserved for the slaves alone.

What is the political intention of punishments? To terrify and be an example to others. Is this intention answered by thus privately torturing the guilty and the innocent? It is doubtless of importance that no crime should remain unpunished; but it is useless to make a public example of the author of a crime hid in darkness. A crime already committed, and for which there can be no remedy, can only be punished by a political society with an intention that no hopes of impunity should induce others to commit the same. If it be true, that the number of those who from fear or virtue respect the laws is greater than of those by whom they are violated, the risk of torturing an innocent person is greater, as there is a greater probability that, *cæteris paribus*, an individual hath observed, than that he hath infringed the laws.

There is another ridiculous motive for torture, namely, to purge a man from infamy. Ought such an abuse to be tolerated in the eighteenth century? Can pain, which is a sensation, have any connection with a moral sentiment, a matter of opinion? Perhaps the rack may be considered as the refiner's furnace.

It is not difficult to trace this senseless law to its origin; for an absurdity, adopted by a whole nation, must have some affinity with other ideas established and respected by the same nation. This custom seems to be the offspring of religion, by which mankind, in all nations and in all ages, are so generally influenced. We are taught by our infallible church, that those stains of sin contracted through human frailty, and which have not

deserved the eternal anger of the Almighty, are to be purged away in another life by an incomprehensible fire. Now infamy is a stain, and if the punishments and fire of purgatory can take away all spiritual stains, why should not the pain of torture take away those of a civil nature? I imagine, that the confession of a criminal, which in some tribunals is required as being essential to his condemnation, has a similar origin, and has been taken from the mysterious tribunal of penitence, where the confession of sins is a necessary part of the sacrament. Thus have men abused the unerring light of revelation; and, in the times of tractable ignorance, having no other, they naturally had recourse to it on every occasion, making the most remote and absurd applications. Moreover, infamy is a sentiment regulated neither by the laws nor by reason, but entirely by opinion; but torture renders the victim infamous, and therefore cannot take infamy away.

Another intention of torture is to oblige the supposed criminal to reconcile the contradictions into which he may have fallen during his examination; as if the dread of punishment, the uncertainty of his fate, the solemnity of the court, the majesty of the judge, and the ignorance of the accused, were not abundantly sufficient to account for contradictions, which are so common to men even in a state of tranquillity, and which must necessarily be multiplied by the perturbation of the mind of a man entirely engaged in the thoughts of saving himself from imminent danger.

This infamous test of truth is a remaining monument of that ancient and savage legislation, in which trials by fire, by boiling water, or the uncertainty of combats, were called judgments of God; as if the links of that eternal chain, whose beginning is in the breast of the first cause of all things, could ever be disunited by the institutions of men.

The only difference between torture and trials by fire and boiling water is, that the event of the first depends on the will of the accused, and of the second on a fact entirely physical and external: but this difference is apparent only, not real. A man on the rack, in the convulsions of torture, has it as little in his power to declare the truth, as, in former times, to prevent without fraud the effects of fire or boiling water.

Every act of the will is invariably in proportion to the force of the impression on our senses. The impression of pain, then, may increase to such a degree, that, occupying the mind entirely, it will compel the sufferer to use the shortest method of freeing himself from torment. His answer, therefore, will be an effect as necessary as that of fire or boiling water, and he will accuse himself of crimes of which he is innocent: so that the very means employed to distinguish the innocent from the guilty will most effectually destroy all difference between them.

It would be superfluous to confirm these reflections by examples of innocent persons who, from the agony of torture, have confessed themselves guilty: innumerable instances may be found in all nations, and in every age. How amazing that mankind has always neglected to draw the natural conclusion! Lives there a man who, if he has carried his thoughts ever so little beyond the necessities of life, when he reflects on such cruelty, is not tempted to fly from society, and return to his natural state of independence?

The result of torture, then, is a matter of calculation, and depends on the constitution, which differs in every individual, and it is in proportion to his strength and sensibility; so that to discover truth by this method, is a problem which may be better solved by a mathematician than by a judge, and may be thus stated: The force of the muscles and

the sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime.

The examination of the accused is intended to find out the truth; but if this be discovered with so much difficulty in the air, gesture, and countenance of a man at case, how can it appear in a countenance distorted by the convulsions of torture? Every violent action destroys those small alterations in the features which sometimes disclose the sentiments of the heart.

These truths were known to the Roman legislators, amongst whom, as I have already observed, slaves only, who were not considered as citizens, were tortured. They are known to the English a nation in which the progress of science, superiority in commerce, riches, and power, its natural consequences, together with the numerous examples of virtue and courage, leave no doubt of the excellence of its laws. They have been acknowledged in Sweden, where torture has been abolished. They are known to one of the wisest monarchs in Europe, who, having seated philosophy on the throne by his beneficent legislation, has made his subjects free, though dependent on the laws; the only freedom that reasonable men can desire in the present state of things. In short, torture has not been thought necessary in the laws of armies, composed chiefly of the dregs of mankind, where its use should seem most necessary. Strange phenomenon! that a set of men, hardened by slaughter, and familiar with blood, should teach humanity to the sons of peace.

It appears also that these truths were known, though imperfectly, even to those by whom torture has been most frequently practised; for a confession made during torture, is null, if it be not afterwards confirmed by an oath,

which if the criminal refuses, he is tortured again. Some civilians and some nations permit this infamous *petitio principii* to be only three times repeated, and others leave it to the discretion of the judge; therefore, of two men equally innocent, or equally guilty, the most robust and resolute will be acquitted, and the weakest and most pusillanimous will be condemned, in consequence of the following excellent mode of reasoning. I, the judge, must find someone guilty. Thou, who art a strong fellow, hast been able to resist the force of torment; therefore I acquit thee. Thou, being weaker, hast yielded to it; I therefore condemn thee. I am sensible, that the confession which was extorted from thee has no weight; but if thou dost not confirm by oath what thou hast already confessed, I will have thee tormented again.

A very strange but necessary consequence of the use of torture is, that the case of the innocent is worse than that of the guilty. With regard to the first, either he confesses the crime which he has not committed, and is condemned, or he is acquitted, and has suffered a punishment he did not deserve. On the contrary, the person who is really guilty has the most favourable side of the question; for, if he supports the torture with firmness and resolution, he is acquitted, and has gained, having exchanged a greater punishment for a less.

The law by which torture is authorised, says, Men, be insensible to pain. Nature has indeed given you an irresistible self-love, and an unalienable right of self-preservation; but I create in you a contrary sentiment, an heroic hatred of yourselves. I command you to accuse yourselves, and to declare the truth, amidst the tearing of your flesh, and the dislocation of your bones.

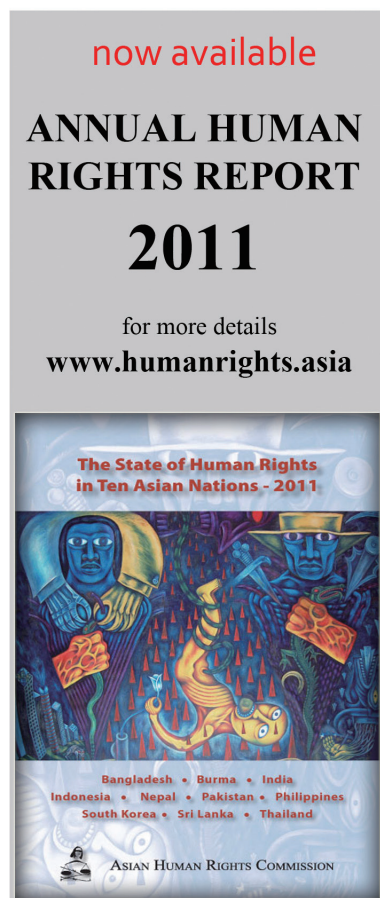
Torture is used to discover whether the criminal be guilty of other crimes besides

those of which he is accused, which is equivalent to the following reasoning. Thou art guilty of one crime, therefore it is possible that thou mayest have committed a thousand others; but the affair being doubtful I must try it by my criterion of truth. The laws order thee to be tormented because thou art guilty, because thou mayest be guilty, and because I choose thou shouldst be guilty.

Torture is used to make the criminal discover his accomplices; but if it has been demonstrated that it is not a proper means of discovering truth, how can it serve to discover the accomplices, which is one of the truths required? Will not the man who accuses himself yet more readily accuse others? Besides, is it just to torment one

man for the crime of another? May not the accomplices be found out by the examination of the witnesses, or of the criminal; from the evidence, or from the nature of the crime itself; in short, by all the means that have been used to prove the guilt of the prisoner? The accomplices commonly fly when their comrade is taken. The uncertainty of their fate condemns them to perpetual exile, and frees society from the danger of further injury; whilst the punishment of the criminal, by deterring others, answers the purpose for which it was ordained.

Courtesy: Of Crimes and Punishments by Cesare Beccaria (March 15, 1738 – November 28, 1794)



BANGLADESH Rulers establish an illusion of rule of law
BURMA From blinkered to market-oriented despotism?
INDIA Human rights a utopia without justice
INDONESIA The Decay of Pancasila and Constitutional Protections
NEPAL The State of Human Rights in Nepal in 2011
PAKISTAN The State of Human Rights in Pakistan in 2011
PHILIPPINES The social & systemic implications are irreparable
SOUTH KOREA The State of Human Rights in South Korea in 2011
SRI LANKA HR Agencies failed to notice the collapse of the Public Institutions of Justice
THAILAND Consolidating internal security state, complaisant judiciary

VIEWPOINT: BY HESHETO CHISHI

NORTHEAST INDIA: INFRINGEMENT OF TRIBAL PEOPLES' HUMAN RIGHTS



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BY DR. HESHETO Y. CHISHI

Indigenous Cultural Society, Nagaland

"The world suffers a lot not because of the violence of the bad people but because of the silence of good people" – Author unknown

Northeast India comprises eight states popularly known as the eight sisters: Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. The northeastern region is surrounded by the foreign territories of Bhutan, Tibet-China, Myanmar, and Bangladesh. A long narrow piece of land bridges the eight sisters in the west with West Bengal and the rest of India. Northeast India's official population is 31,547,314, of which the tribal population officially numbers 8,142,624, or 25.81% of the entire population.

I have adopted an activist's perspective in the writing of this article and focus primarily on accounts of human rights violations by the government and government-affiliated agencies. As such, for many, this article may seem to lack an academic technicality or neutrality. Yet for many others, this will

introduce them to several basic concepts to any discussion of human rights. I intend to break the silence on the terrible theatrics which describes the prevailing conditions tribal peoples in Northeast India face, a subject so morally confronting that it cannot be adequately broached with a completely objective voice. Neither can this topic be fully appreciated by a distant observer. I therefore invite you to join me in pricking our minds and consciences in attempts to understand human rights issues in Northeast India.

Human Rights: a universal concept

Human rights are entitlements inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to these rights without discrimination by the simple virtue of being human. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law. These guarantees

take the form of national constitutions, common law, treaties and conventions in international law, general principles and other moral or civil codes. International human rights law specifically establishes the obligations of Governments to act, or refrain from acting, in certain ways to promote and protect human rights and fundamental freedoms of individuals and groups.

Nature of Human Rights

Universal and inalienable – The principle of universality of human rights law is the declarations, and resolutions of 1948, and duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. This declaration was enshrined in the 1993 Vienna World Conference on Human Rights, which extends equality of entitlement to every human being.

Human rights are also inalienable. This means that on the basis on being a human, an individual already possesses rights. These rights in themselves cannot actually be taken away, but they may be ignored, violated and denied through acts that deprive the human of the objects those rights guarantee (e.g. life, liberty, security of person). This is the foundation upon which rights discourse is built.

It is important to note that rights are not ends in themselves but a guarantee to those ends – right to the freedom of speech, for example, is not the same as freedom of speech itself. In any particular situation, the former (the entitlement to freedom of speech) prescribes, the latter describes (already having freedom of speech). Rights necessarily have coeval duties or obligations, which States are obliged to bear, and rights discourse only makes sense where rights are being denied. We can only talk meaningfully about entitlement

to something if we are unable or do not currently possess that thing. I will return to this later when discussing the rights of tribal communities in Northeast India.

Interdependent and indivisible – All human rights are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others. Respecting and protecting a person's right to security of person will naturally strengthen a person's right to life, for instance.

Equal and non-discriminatory – Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights." This is a normative statement in which no human being's life and liberty is worth more or less than another person's life and liberty.

Both Rights and Obligations – Because equality is integral to the exercise and protection of rights, states, communities and individuals have to bear corresponding duties to ensure every individual's rights are guaranteed. The obligation is both moral and legal – to enjoy your own rights, you must never deprive others from enjoying theirs.

Reflection on general concerns – Amongst the more than 47 Human Rights issues identified by the United Nations, twenty-nine issues address concerns particular to tribal (minority) communities:

- Adequate Housing
- Civil and Political Rights: Human Rights Committee (HRC)
- Climate Change
- Cultural Rights: Independent Expert in the field of cultural rights
- Democracy: Rule of Law - Democracy and Human Rights

- Development (Good Governance and Debt): Foreign debt and other related international financial obligations of States to protect the full enjoyment of all human rights, particularly economic, social, cultural rights and right to development
- Discrimination
- Economic, Social and Cultural Rights
- Education: Right to education, world programme for human rights education (2005-ongoing)
- Environment: adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights
- Food: Right to food
- Freedom of Opinion and Expression: combatting advocacy of religious hatred that incites discrimination, hostility or violence. Promoting and protecting the right to freedom of opinion and expression
- Freedom of Religion and Belief
- Gender: Women's Rights and Gender
- Health: Elimination of discrimination against persons affected by leprosy and their family members on the right to highest attainable standard of physical and mental health
- Human Rights and International Solidarity
- Human Rights Education and Training
- Indigenous Peoples: Rights of Indigenous Peoples, on the situation of human rights and fundamental freedoms of indigenous peoples and populations.
- Migration: Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) .On the human rights of migrants.
- Millennium Development Goals (MDG) and Human Rights
- Minority issues
- Poverty: the rights of the poor
- Slavery: Working Group on contemporary forms of slavery
- Terrorism: countering terrorism

- Torture: on Prevention of Torture
- Trafficking in Persons: women and children
- Water and Sanitation: access to safe drinking water and sanitation
- Women: Elimination of Discrimination against Women (CEDAW), violence against women, its causes and consequences

Tribal (Minority) Rights – Tribal people form over 8.2% of India's population, according to the 2001 census. While 27% of the country's population lives below the poverty line, a disproportionate 50% of the over 93 million indigenous people live below the poverty line according to Planning Commission data of 2004. The indigenous tribal peoples are the unique and precious "children of the land". Many still live in the swiftly disappearing and degrading forests in the states of Madhya Pradesh, West Bengal, Jharkhand, Orissa, and other categorically different north-eastern states. The main objective of publicising the need to protect the human rights of these minorities is not only their socio-economic and cultural development, but also the preservation of their identity as forest people who still claim that the forests, streams and other resources like natural springs belong to them as their inalienable birth-right. Helping these individuals from tribal societies grow freely and naturally in their own, most natural habitat, speaking their native tongues, in their own traditional manner and fully possessed of legal and social equality is the concern of every civilised person.

Cultural rights – Culture is the cornerstone of identity, and comprises a community's unique language, art, literature, set of beliefs, worldview, mannerisms, customs, history, folklore, diet, dress, music, sport, aspirations, familial networks, architecture, etc. Because culture is integral to the diversity

of humanity and to every individual who necessarily defines and locates himself or herself relative to the rest of society, it deserves to be protected.

Forest rights – The Government has, under the guise of forest conservation, robbed tribal communities of their main, if not only, resource and livelihood i.e. forest lands and water. The government also plans to forcibly evict these tribal communities from forested areas – ostensibly for the sake of forest conservation and the safety of wildlife. There is a glaring lack of transparency with regards to how that bill is relevant to other laws such as the Wildlife (Protection) Amendment Act 2002 (WLPA), the Indian Forest Act 1927 (IFA) and the Forest Conservation Act 1980 (FCA).

Land rights – Many members of tribal communities have been victimised through various projects waged in the name of the country's economic development. Land grabbing by the government has become a perennial problem.

Mining and other industrial projects irreversibly lay to waste wide swathes of forest. The dispossessed tribal peoples are neither compensated nor consulted in the process, and the government rarely bears the responsibility of relocating these communities and finding them new employment. Families are unable to support themselves and often resort to criminal activities or other degrading forms of "livelihood" (scavenging). Scattered, the community's culture (language and customs) will be quickly lost. To find themselves poor, hungry, unemployed and discriminated against will create a new bitterness and disillusionment with the state within the displaced peoples. Social unrest, environmental degradation and loss

of natural resources, increase in crime and homelessness in big cities are some of the many resulting problems that will assail the entire country for having made the callous decision to sacrifice human rights to economic imperative.

Water rights – Clean water is crucial to sustaining life; access to water is therefore essential to the right to life. By introducing "noble" schemes of irrigation, hydroelectricity (which necessitates damming projects), cash-crop cultivation, the Government has deprived many tribal communities of water. This artificial "drought" will force communities to move and render previously fertile land and forest barren. This will in turn also affect the fauna in that habitat. Tribal communities deserve to have specifically designated and adequately large and clean water catchment areas inasmuch as they deserve to live, and these minorities have a right to life equal in importance to the right of an official or voting parliamentarian to life.

Socioeconomic problem – Most members of tribal communities, particularly women, are illiterate. They have poor health, lifespans shorter than the national average and children who suffer chronic malnutrition and various related diseases. Such appalling conditions further impoverish and disempower these communities. Displaced tribal people often find themselves dispersed into lands and cities wherein they cannot understand or communicate effectively in the predominant language, adapt to the diet (if they are able to find food at all) or be socially accepted. Their identities and physical survival is at stake in such situations. Many of them are cruelly forced to work as day-labourers in the very lands they have been uprooted from, often at the fringes of almost entirely denuded forests.

Constitutional Rights – The Indian Constitution states that the Indian government is responsible for the lives and safety of its citizens. Yet the government seldom acknowledges the spirit of such a declaration, particularly in relation to tribal rights. One potent example is the special provision in Article 371A to establish a Nagaland state in the northeast so that the rights of this community may be protected. The current situation of tribal communities in Northeast India, however, flies in the face of such weak resolutions and empty promises by a government that superficially accepts its title as duty-bearer but refuses to actually bear the duty of providing for and protecting its people.

Thought-provoking issues: abstract from media report

Human rights were initially conceived of precisely to protect the oppression of minorities by dominant cultures and peoples. Genocide in Nazi Germany, in Rwanda, in Sudan and elsewhere are examples in which morally reprehensible acts sponsored, endorsed and enacted by the majority against minorities outraged the human conscience and gave birth to human rights discourse.

Today, the number of tribal women deceived into concubinage and prostitution by Hindu “plains people” in the name of marriage outnumbers even the large number of land dispute cases. Yet laws permit the violation of tribal women’s rights in northeast India.

Marriage by capture, mutual love and elopement and marriage by service are socially accepted ways of acquiring mates among the tribal peoples, whereas such acts are prohibited in mainstream Hindu society. On the other hand, concubines and prostitutes are part of the Hindu value system but are not permitted in tribal communities.

Such conflicting value systems introduce and exacerbate tension in society, with the dominant culture or group (in this case, the Hindus) imposes its values and worldviews on the minorities and enforces these prejudices, inequalities and customs through law. A legal system constructed on numerical biases is composed of individuals sharing that same cultural bigotry and intolerance, all the fiercer for the opposition mounted by cultural minorities. Many tribal women have been tricked into becoming concubines and prostitutes although they expected to be formally married. The men who wrong these women escape legal responsibility for their atrocious treatment of these unsuspecting tribal women by invoking the Hindu Marriage Act. Should we then conclude that the legalised bulldozing of human dignity and justice is fair and morally acceptable? There is so much more Indian authorities can offer the tribal peoples and the wider Indian nation by actively protecting and providing for these downtrodden individuals, and by offering sufficient legal and financial assistance for victims to seek redress.

In *The Hindu*, Wednesday, December, 23, 1992, Rajahmundry pointed out that

“Many people from the plains deceive tribal women in the name of marriage. When the tribal women go to court for maintenance, the judgments went against them. While dealing with these cases he wanted the tribal customs to be taken into account. Among tribals, a concubine is treated on par with the legal wife”.

The Hindu, Wednesday July 15, 1992, “PLAIN EXPLOITATION OF TRIBAL WOMEN”

“...The exploitation of tribal women has been going on unabated. They are victims of different value systems. Protectors of the rights of tribal women suggest that a solution

to the problem can be found only by placing the tribal women's rights to maintenance in the statute book and allowing for tribal panchayats to enforce these payments and represent the tribal women. What is, however, immediately needed is creating awareness among people that such exploitation has been taking place for many decades".

Surrogacy victims: Mostly tribal women are being targeted for chipper charge and lesser legal work (according to NDTV report).

Effect of climate change – Climate change affects the most vulnerable segments of society. In India, over 70% of the population lives in rural areas and have to cope with the unpredictable natural environment. The government of India has a duty to guarantee the rights of all people affected by the uncontrollable natural elements and take need-specific action to insulate these people against the destruction of their homes and livelihoods. The government has the legal-constitutional and moral obligation to protect land rights of those who lose their lands and other property due to erosion by rivers, drought, floods, cyclones and landslides without discrimination. If it so happens that tribal communities are the main group affected due to their homes being in the affected areas, the government is still obliged to render all possible help. If the communities are relocated, the government has to actively prevent discrimination against them and seek employment in their new homes. Only by being responsible and responsive can the Indian government prove its credibility and noble commitment to its people. Only by acting to protect its people rights can the government be deserving of its mandate.

Conclusion

The stark and gross violation of not only human rights but also their rights to be human

is observed by various research groups. The tribal people have been criminally deprived, displaced and dispossessed of their cultural and traditional rights too under the garb of "national and economic development". Tribals have been deceived, neglected, robbed, raped, murdered, treated as second class citizens and animals in the very lands that have always belonged to them – this is patently unfair, oppressive and morally repugnant.

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IN OUR NEXT ISSUE - AN EXTENSIVE COVERAGE ON SRI LANKA

A question: why is torture endemic to the country, even after passage of many laws and the acceptance of numerous conventions against torture?

INTERVIEW: DARIUS REJALI

ANALYSIS: POLITICS OF TORTURE AND POLITICS OF TERROR IN SRI LANKA
DR. LAKSIRI FERNANDO

STUDY: MANAGEMENT OF PSYCHOLOGICAL CONSEQUENCES OF TORTURE IN SRI LANKA
DR. DAYA SOMASUNDARAM

OPINION: UNCAT
SRI LANKA EXPERIENCE
DR SERGEY GOLUBOK

ESSAY: HISTORY OF TORTURE IN SRI LANKA
DR. U.P.C. PERERA

VIEW POINT: TORTURE ON SUSPECTS

TORTURE
ASIAN AND GLOBAL PERSPECTIVES

BELIEVE IN ONE GOAL : TORTURE FREE SOCIETY

**LET US FORGE THE POLITICAL WILL TO
ERADICATE TORTURE IN ASIA**

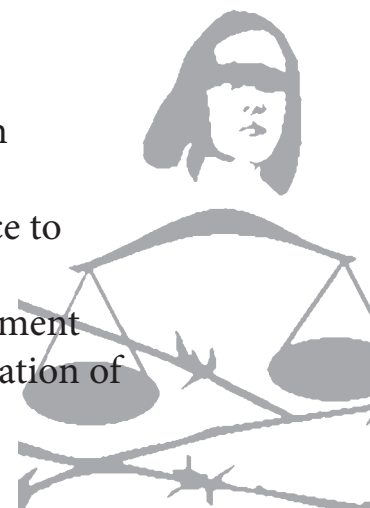
following are some of the parliamentarians who will attend the meeting

ASIAN ALLIANCE AGAINST TORTURE
to be held from
23 - 26 July, 2012
in Hong Kong



LET US

- Direct the legal profession towards such a goal
- Render practical assistance to victims of torture
- Push for adequate government funding for the administration of justice



**LET US MAKE IMPUNITY
A THING OF THE PAST**

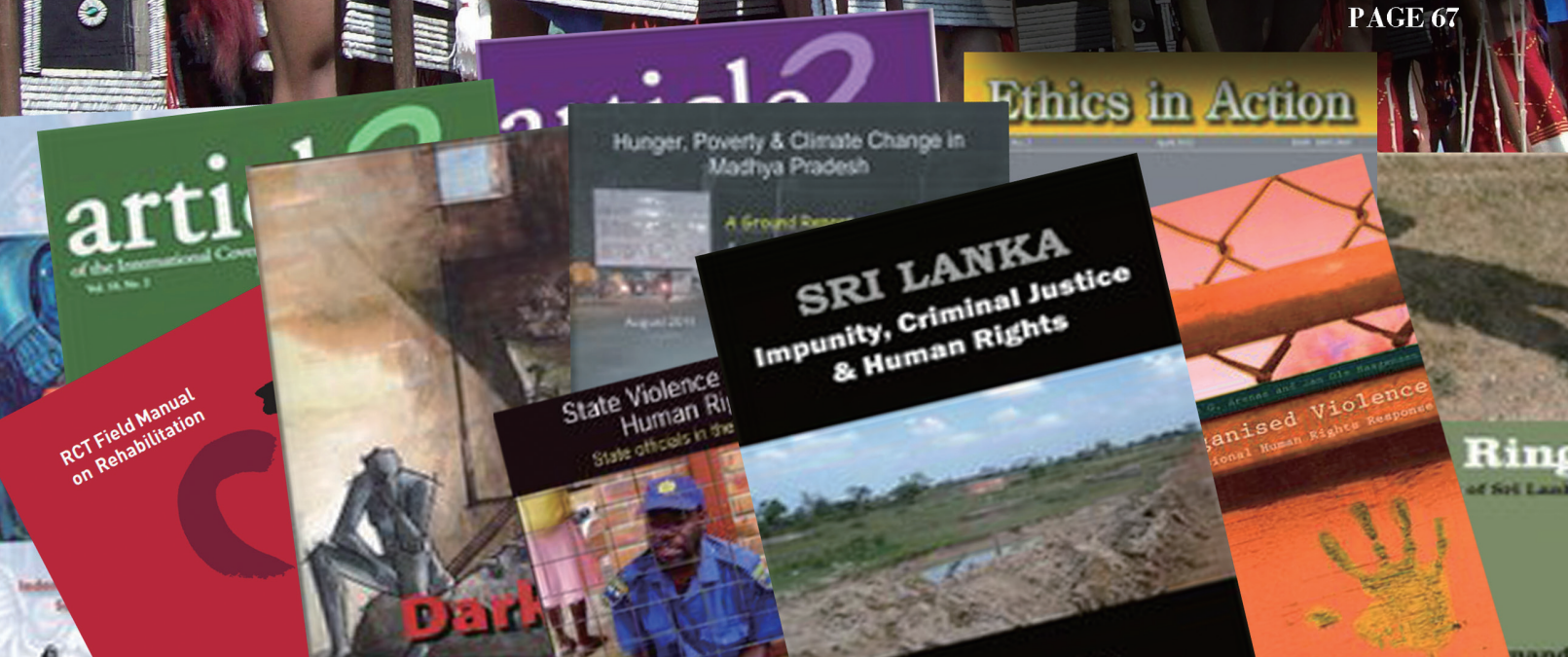
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TORTURE

ASIAN AND GLOBAL PERSPECTIVES

**TOO OFTEN, INDIAN TRIBES ARE
AT THE MERCY OF THE SHIFTING
POLITICAL WINDS OF
STATE GOVERNMENT.**

PAGE 67



Published by

Asian Human Rights Commission Ltd.
Unit 701A, Westley Square
48 Hoi Yuen Road
Kwun Tong, KLN
Hong Kong, China

Website: humanrights.asia

Rehabilitation and Research Centre
for Torture Victims
Borgergade 13
DK - 1014 Kobenhavn K
CVR nr: 69735118
Pnn: 1002304764

Website: www.rct.org

Printed by

Clear Cut Publishing & Printing Co.
A1, 20/F, Fortune Factory Building
40 Lee Chung Street, Chai Wan,
Hong Kong, China

ISSN 2304-134X



9 772304 134002